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Report to Congressional Requesters

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LEGAL SERVICES CORPORATION

Grantee Attorneys' Handling of Migrant Farmworker Disputes With Growers

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Human Resources Division

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The Honorable Beverly Byron
The Honorable George Gekas
The Honorable Bill McCollum
The Honorable French Slaughter, Jr.
The Honorable Charles W. Stenholm
The Honorable Harley O. Staggers, Jr.
House of Representatives

This report responds to your March 9, 1989, request that we study the activities of Legal Services Corporation (LSC) grantees that represent migrant and seasonal farmworkers. Grantees are organizations that receive LSC grants to provide legal services to needy clients. Your letter indicated a general concern with the magnitude and propriety of grantee attorneys' actions against growers who employ migrant and seasonal farmworkers to harvest their crops. You asked us to answer the following questions about LSC's migrant farmworker program, focusing on grantee activities in Delaware, Florida, Maryland, Pennsylvania, Texas, Virginia, and West Virginia:

- Is there a difference in the number of grantee cases brought against growers in the seven states compared with the rest of the nation and, if so, why?
- How do grantees set case priorities, and are they being followed?
- What migrant and seasonal farmworker issues are most often pursued by grantee attorneys?
- To what extent do grantee attorneys make efforts to avoid litigation by using negotiation or other forms of alternative dispute resolution?
- Do grantee attorneys meet standards of conduct for the legal profession, and to what extent do attorneys release to growers the names of farmworkers involved in legal actions?
- What portion of LSC migrant grants are spent for litigation?
- What controls are in place over grantee client trust accounts?
- What role does the Migrant Legal Action Program (MLAP) play, and how does it support grantee activities?

In addition to responding to these questions, we conducted case studies of five growers involved in migrant farmworker disputes with grantee attorneys to identify issues, determine whether the attorneys attempted negotiation, obtain grower views on the attorneys' actions, and identify the disputes' effects on the growers.

Background

In 1974, the Congress enacted the Legal Services Corporation Act establishing LSC as a nonprofit, federally funded corporation to provide free legal assistance to the financially disadvantaged. In a 1977 amendment, the Congress directed LSC to study the difficulties of access to legal services and the unmet legal problems of special client groups, including migrant and seasonal farmworkers.

In its report, LSC concluded that migrant farmworkers needed special legal attention because they (1) stayed in farm labor camps far removed from population centers and lacked transportation to legal services offices; (2) moved from one crop harvest to another, making contact with legal services advocates and case resolution difficult; (3) had difficulty communicating in English and often had limited literacy in their own language; (4) were often unable or unwilling to communicate about the conditions in which they worked and lived; and (5) did not usually seek legal assistance because of their limited education and a cultural aversion to using the legal system. The study concluded that these special legal problems of migrant farmworkers required legal staff with expertise and specialized knowledge. Seasonal farmworkers are nonmigrant farmworkers who commute to the fields from their permanent places of residence, are essentially part of the migrant labor force, and experience some of the same problems. At present, LSC funds legal services for migrant and seasonal farmworkers in 41 states and Puerto Rico.

In fiscal year 1988, LSC supported migrant grantees with funds totaling $9.4 million. Although migrant grantees can and do provide legal services to seasonal farmworkers, as a practical matter, most of their legal assistance in the employment area (the focus of our review), appear to be directed at addressing disputes between migrant farmworkers and growers.

Four of the 42 migrant grantees provide legal services in "base states"—California, Florida, Texas, and Puerto Rico—where many migrant farmworkers maintain permanent residence during the winter. The other 38 grantees provide legal services to migrant farmworkers in "stream" states, where migrants (1) travel to find work and (2) live temporarily when away from their permanent residences. The stream states include Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, five of the seven states included in the request.

Most migrant farmworker disputes against growers involve violations of provisions of either the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) or the Fair Labor Standards Act (FLSA). AWPA imposes certain requirements on persons who own or operate a farm and who recruit, employ, or transport farmworkers. AWPA requirements relate to (1) disclosure of wages, hours, and other terms of employment, (2) payment of wages and compliance with contract terms, (3) record keeping, (4) housing safety and health conditions, (5) and vehicle safety. FLSA protects all workers, including migrant farmworkers, from employers who fail to pay minimum wage rates and who violate child labor provisions.

While the Department of Labor is responsible for enforcement of AWPA and FLSA, both laws also have private right-of-action provisions that allow farmworkers to bring legal action directly against employers. Legal services available from LSC grantees allow farmworkers to exercise this right, at no cost to them. (See app. I for additional information on LSC's history and migrant-related legislation.)

Scope and Methodology

We obtained our information through (1) discussions with LSC and Labor Department headquarters and Labor Region III (Philadelphia) officials; (2) interviews with officials of six migrant grantees (Delaware did not have an LSC migrant grantee; the Maryland grantee processed cases in Delaware); (3) analysis of LSC's case service reporting system data for calendar years 1985-88 for all state migrant grantees and other reports and documents maintained by LSC headquarters; (4) analysis of fiscal year 1988 Labor Wage and Hour Division statistics on AWPA compliance investigations; (5) contacts with state organizations responsible for enforcing standards of conduct for attorneys; (6) review of the legislative history, regulations, policies, and procedures governing migrant program activities; (7) review of 43 offer-of-settlement letters, with certain information deleted, provided by grantee officials; and (8) case studies of five growers' experiences with grantee attorneys.

Several factors significantly constrained our ability to respond to the questions asked. First, grantees were not required to, and did not, collect and maintain certain requested information. Second, the lack of a feasible methodology hampered our ability to respond to some questions. Finally, the attorney-client privilege and rules of professional conduct

limited information grantees could make available to us.[1] The LSC act explicitly bars our access to records that are subject to the attorney-client privilege. See appendix II for further discussion of our scope and methodology, including a detailed explanation of factors that prevented us from fully responding to the questions asked.

Despite these constraints, we collected information that responds wholly or partially to your questions. We did our fieldwork from May 1989 to March 1990.

Results in Brief

Grantee attorneys providing legal services to migrant farmworkers in Maryland, Pennsylvania, Virginia, and West Virginia brought more cases against growers (as measured by the percentage of all closed cases) than did attorneys in other stream states. Because of scope and methodology limitations, however, we were unable to gather sufficient evidence to conclude whether grantee attorneys used improper methods in representing migrant farmworkers.

Magnitude of Grantee Activity by State

Information maintained in LSC's case service reporting system indicated that grantee attorneys represented migrant farmworkers in disputes against growers in the stream states of Maryland, Pennsylvania, Virginia, and West Virginia at a higher percentage than grantee attorneys in other stream states. Between 1985 and 1988, grantees in these four states reported that about 66 percent of their closed cases were against growers.[2] For the same period, grantees in 30 other stream states reported taking legal actions against growers in about 23 percent of their closed cases. Our analysis of data for the base states showed a significantly lower percentage of closed cases with actions against growers in Florida (14 percent) and Texas (26 percent) than the other base state of California (33 percent).

Grantee officials attributed the higher incidence of migrant farmworkers' disputes against growers in Maryland, Pennsylvania, Virginia, and West Virginia to several factors unique to these mid-Atlantic stream states. These factors included the types of crops grown, the

[1]The attorney-client privilege and particular rules of professional conduct prohibit attorneys from disclosing certain information relating to client representation unless the client consents.

[2]These statistics represent the employment case category of LSC's case service reporting system that, according to grantee officials, primarily involved legal actions against growers and farm labor contractors under AWPA or FLSA.

states' greater use of farm labor contractors, the characteristics of farmworkers who migrate there, and the expertise of grantee legal staff. (For more information on total cases closed and closed employment cases for each of the grantees, see sec. 1.)

Priority-Setting Procedures and Case Closure

LSC regulations require grantee governing boards to (1) periodically assess the need for legal services to migrant farmworkers and review priorities for accepting migrant farmworker cases and (2) annually report these priorities to LSC. However, the regulations permit grantees considerable flexibility in setting priorities.

The priority-setting processes followed by the six grantees varied widely. For example, the Texas grantee set separate priorities for migrant cases in each of its branch offices. The Maryland grantee set priorities based on the types of migrant cases it had received over the years. The Florida grantee established the same priorities for accepting migrant cases that it established for accepting cases from its other needy clients. The West Virginia grantee identified all case categories permitted by LSC procedures. LSC officials acknowledged that designating all case categories as priorities makes it difficult for LSC monitors to determine whether grantees are effectively using their resources.

Based on case service reporting system data, cases closed by the six grantees and falling within their designated priority areas ranged from 85 percent in Maryland to 100 percent in West Virginia. (For more detailed information, see sec. 2.)

Typical Farmworker Issues

Since we did not have access to grantee case files, we could not determine independently the most frequently cited violations of law. Grantee attorneys told us that they cited violations of AWPA and FLSA more often than violations of other laws in representing migrant farmworkers in disputes against growers. Violations of these laws include growers' failure to (1) pay wages for all hours worked, (2) pay wages promptly, (3) pay minimum wage rates, (4) accurately describe working conditions, and (5) meet minimum housing standards. (See sec. 3.)

Grantee Efforts to Negotiate

Our review of LSC's data showed that grantees reported successfully negotiated settlements with growers in about (1) 80 percent of the 1,069 cases settled or decided in 1987 and (2) 87 percent of the 1,343 cases settled or decided in 1988.

Officials from the six grantees we visited said that attorneys almost always attempted to resolve disputes between migrant farmworkers and growers before initiating litigation. Resolution efforts included writing letters to, making telephone calls to, and meeting with growers and their attorneys. In these contacts, attorneys outlined violations, made offers of financial settlement, and invited responses. Grantees are not required to report information in the case service reporting system on the extent to which they use third-party forms of dispute resolution, such as mediation or arbitration. (See sec. 4.)

Grantee Attorneys' Standards of Conduct and Release of Farmworkers' Names

State organizations responsible for enforcing standards of conduct for attorneys did not report any disciplinary actions taken against migrant grantee attorneys from 1985 to 1988 in the six states. Further, none of the attorneys employed by the six grantees had malpractice charges filed against them since January 1989, when LSC headquarters first required grantees to report such charges.

We reviewed 19 closed case files documenting the disposition of LSC migrant-related complaints received between 1985 and 1988. These 19 were identified by LSC headquarters officials as complaints against grantees who provided legal services to migrant farmworkers during this period. We found no evidence that LSC investigators substantiated any of the 19 complaints of alleged improper conduct by grantee attorneys.

Due to access-to-records limitations, we were unable to determine the extent to which grantee attorneys identified the farmworkers they represented when notifying growers of legal actions initiated against them. According to grantee officials, unless the migrant farmworkers fear retaliation from either the grower or a crew leader, they generally release farmworker names to growers and their attorneys. (See sec. 5.)

LSC Funds Used for Litigation

LSC funds used for litigation expenses by each of the six LSC grantees varied from $705 to $165,004 in 1987 and 1988. We could not determine what portion of these funds grantees spent in litigating cases against

growers because data on the type of defendant are not collected. (See sec. 6.)

Controls Over Client Trust Accounts

Various rules govern attorney responsibilities relating to the receipt and disbursement of funds collected for clients through legal actions. The six states included in our review adopted rules consistent with American Bar Association model rules. These rules require attorneys to notify promptly a client or third person when funds are received, deliver promptly funds that the client or third person is entitled to receive, and provide, upon request, a full accounting of clients' or third persons' funds being held. For its grantees, LSC developed an audit and accounting manual, which establishes certain internal control procedures for client trust accounts—grantee accounts in which funds paid by growers are held until farmworkers are paid. All six grantees established written internal control procedures to assure the proper management of client trust accounts.

Grantees with the largest caseloads—those in Texas and Florida—adopted the most comprehensive internal controls. Grantees in Maryland, Pennsylvania, Virginia, and West Virginia—with smaller caseloads—adopted fewer comprehensive controls. The controls adopted by all grantees, LSC headquarters' officials said, were generally adequate. Because we did not have access to account records, we were unable to verify that the grantees had properly implemented these procedures or that the procedures provided adequate controls over the accounts. (See sec. 7.)

Migrant Legal Action Program

MLAP's primary role is to provide legal and technical assistance to grantees serving migrant and seasonal farmworkers. In difficult cases, however, grantee attorneys may request an MLAP attorney to act as either primary counsel or cocounsel in representing a farmworker.

In 1988, LSC provided MLAP with a $547,649 grant for its operating expenses. LSC does not require MLAP to maintain actual time records or report the cost per case handled; however, MLAP officials estimated that they spent 38 percent of LSC funding to represent or act as cocounsel for migrant and seasonal farmworkers in 24 cases. Legal research and analysis to assist migrant grantee attorneys represented 40 percent of 1988 funding; production and distribution of publications, 12 percent; and other expenses, 10 percent. (See sec. 8.)

Grower Case Studies

We conducted case studies of the interactions between grantee attorneys and five growers over migrant and seasonal farmworker disputes. This information provides the perspective of only these five growers and may not represent the experiences of the many growers against whom grantees have taken legal action to resolve migrant farmworker disputes. We selected these cases from growers identified by: congressional staff members, grower associations, and a search of LSC closed complaint files.

The issues in these five case studies paralleled the issues identified by grantee officials as most often cited in migrant cases and included failure to (1) pay for hours worked, (2) pay minimum wage rates, (3) disclose working conditions, and (4) keep adequate employment records. Grantee attorneys attempted to negotiate a settlement with each grower, although issues were ultimately litigated in two of the growers' cases. Two growers believed, however, that grantees' offer-of-settlement letters placed them in a no-win situation by forcing them either to pay the compensation amounts requested, and in effect admit guilt, or to incur large legal fees to defend themselves in court. These growers contrasted their situations to that of the migrants, who received legal representation at no cost.

All five growers attributed an economic cost to the legal actions brought against them, which the growers estimated at from $2,215 to over $100,000. (The grower asserting that his legal costs totaled over $100,000 did not wish to provide documentation supporting the estimated cost of his attorney fees.) Two growers cited legal services activities as contributing factors in their decisions to discontinue farming. Also, three growers partly blamed grantee activity for losses in productivity or crop quality. Grantee officials, however, provided a different account of some of the events that transpired in their representation of the migrant farmworker disputes and believed their actions were consistent with the legal profession's standards of conduct.

We found that the actions of grantee attorneys in four of the five cases generally seemed reasonable; however, in one case a court ruling questioned certain grantee attorney's actions. Also, we observed a mutual distrust in some grower-grantee attorney relationships that does not appear conducive to constructive negotiation. (See sec. 9.)

We did not obtain written comments from LSC about the matters discussed in this report. We discussed the report's contents, however, with LSC and grantee officials, incorporating their comments where appropriate.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to other congressional committees, LSC, the six grantees we reviewed, the five growers included in our case studies, the Department of Labor, and other interested parties on request.

Please call me on (202) 275-1655 if you or your staffs have any questions about this report. Other major contributors are listed in appendix V.

Linda G. Morra
Director, Intergovernmental
and Management Issues

Contents

Abbreviations

ABA	American Bar Association
AWPA	Migrant and Seasonal Agricultural Worker Protection Act
CSR	case service reporting
FLSA	Fair Labor Standards Act
FOF	Friends of Farmworkers, Inc.
FRLS	Florida Rural Legal Services, Inc.
GAO	General Accounting Office
LAB	Legal Aid Bureau, Inc.
LSC	Legal Services Corporation
MLAP	Migrant Legal Action Program, Inc.
PLAC	Peninsula Legal Aid Center, Inc.
TRLA	Texas Rural Legal Aid, Inc.
WVLSP	West Virginia Legal Services Plan, Inc.

Is There a Difference in the Number of Migrant Farmworker Cases in Selected States Compared With the Nation, and Why?

Information maintained in LSC's case service reporting (CSR) system suggested that, overall, grantee attorneys, representing migrant and seasonal farmworkers in the stream states of Maryland, Pennsylvania, Virginia, and West Virginia between 1985 and 1988, closed fewer cases than grantees attorneys closed in 30 other stream states.[1] However, in these 4 states a higher percentage (66 percent) of cases closed involved growers and farm labor contractors than in the 30 other stream states (23 percent).

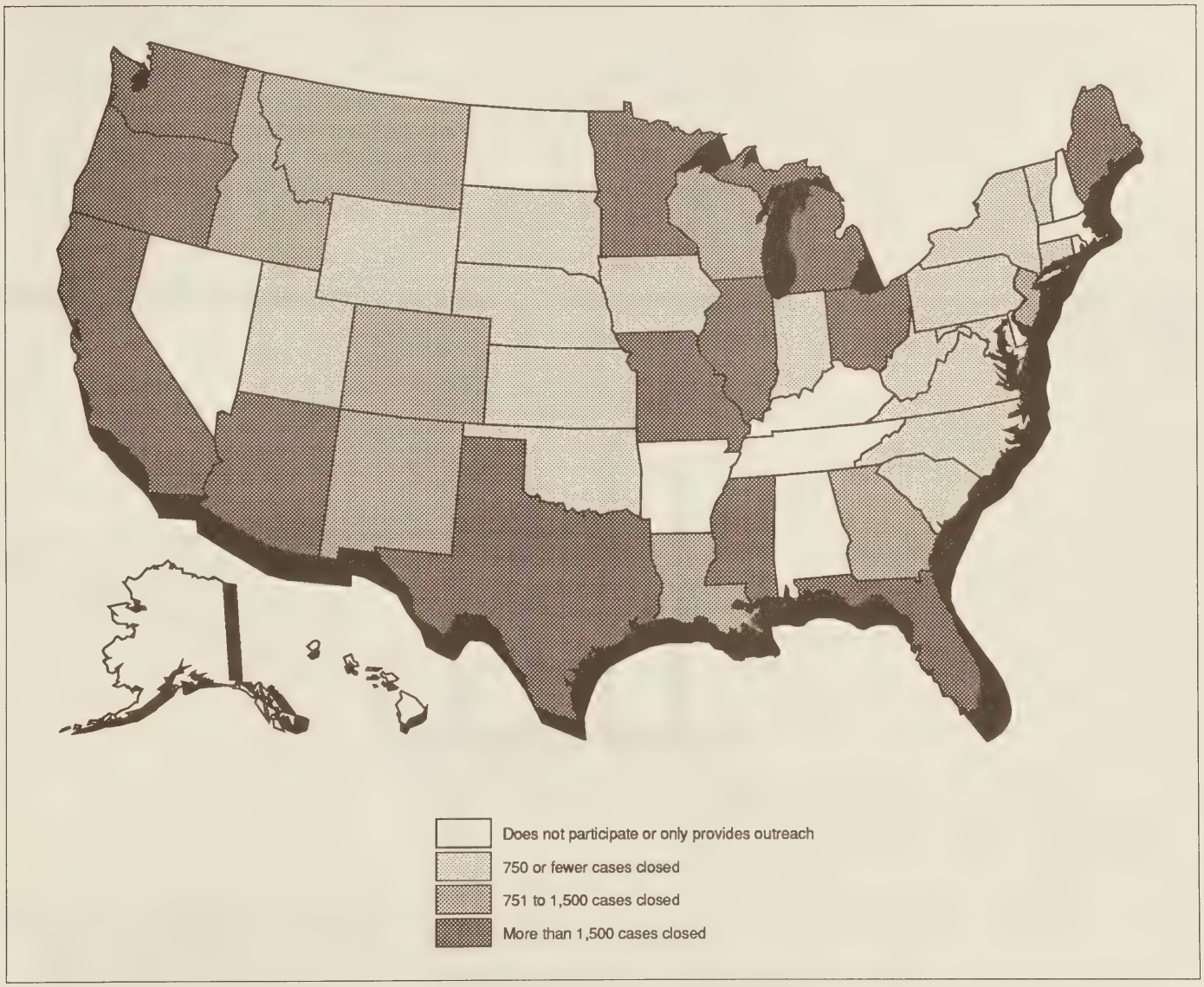
Grantee officials told us that the higher percentage of migrant farmworker disputes with growers in the four stream states could be attributed to several factors unique to the mid-Atlantic region. These factors included the extensive growth of hand-harvested crops, the greater use of farm labor contractors, the characteristics of migrant farmworkers, and the expertise of grantee legal staff.

Overall Grantee Activity

Grantee attorneys representing migrant farmworkers in the four stream states of Pennsylvania, Maryland, Virginia, and West Virginia closed fewer cases from 1985 through 1988 than grantee attorneys in many of the 30 other stream states reporting closed cases. Figure 1.1 shows relative state groupings by the total cases closed from 1985 to 1988 in all states with migrant grantees. As indicated, the four stream states in our review ranked among the lower two-thirds of all migrant grantees in terms of total cases closed for the 4-year period. Migrant grantees in the base states of Texas and Florida ranked first and second, respectively, in terms of total cases closed in those 4 years. Table I.1 in appendix I shows the number of closed cases by each migrant grantee from 1985 to 1988, the level of each grantee's funding, and the estimated migrant population in each state.

[1] A closed case is defined as a legal problem (or set of closely related legal problems) of a client that has (have) been resolved through legal activities or processes.

Figure 1.1: Number of Cases Closed by Migrant Grantees (1985-88)

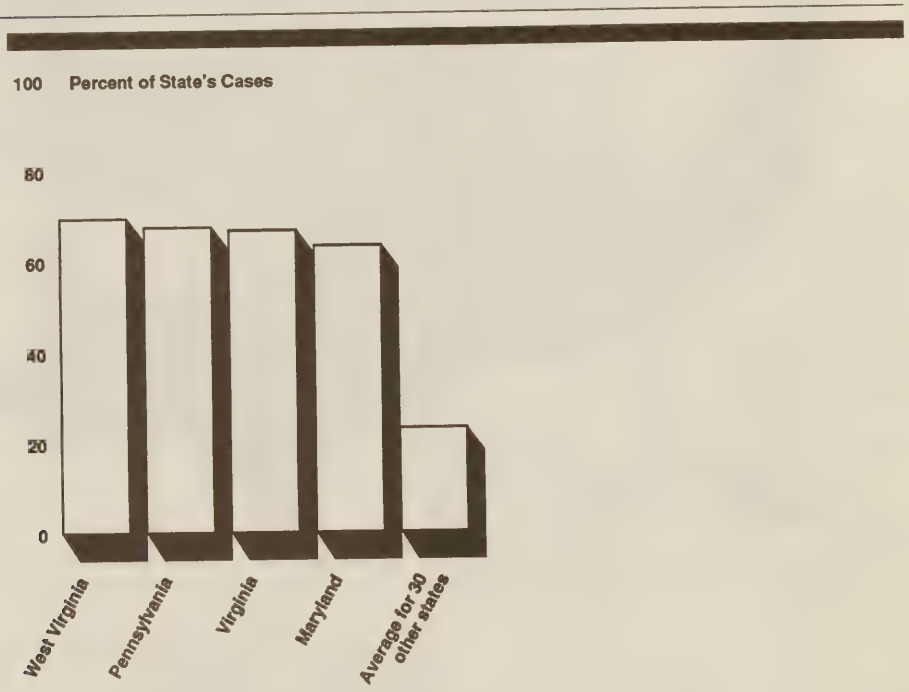


Legal Actions Against Growers

Grantee officials told us that under LSC's CSR system, migrant cases in the "employment" category primarily involve legal actions against growers and farm labor contractors they employ. Neither LSC nor migrant grantees are required to maintain statistics on the number of cases initiated against growers. Therefore, we based our analysis on the

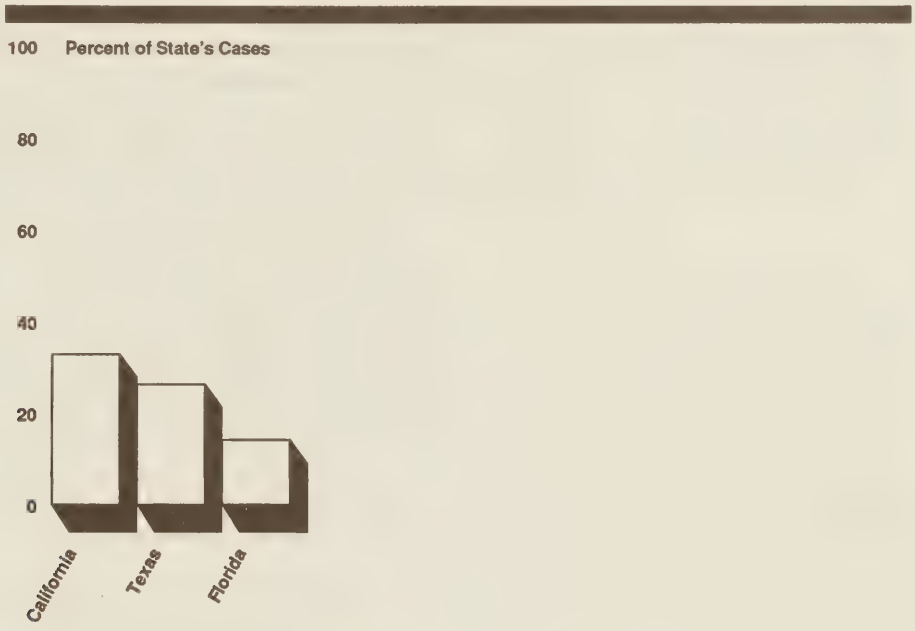
number of employment cases reported closed by each migrant grantee. These data showed that grantee attorneys in Maryland, Pennsylvania, Virginia, and West Virginia closed a higher percentage of legal actions against growers in 1985 through 1988 than did grantee attorneys in the 30 other stream states. During this period, the four grantees reported 1,621 closed cases, of which 1,068, or about 66 percent, were employment cases. During this same period, migrant grantees in the 30 other stream states reported a total of 33,060 case closures, of which 7,548, or about 23 percent, were employment cases (see fig. 1.2).

Figure 1.2: Cases Closed Against Growers and Contractors in Stream States (1985-88)



Our analysis of the data for migrant grantees in Florida and Texas—the two base states in our review—indicated a lower percentage of employment cases than in the other base state—California. During the period 1985 through 1988, Florida reported about 14 percent of its closed cases represented employment cases and most of these involved farmworkers' disputes with growers. Texas reported about 26 percent and California reported about 33 percent (see fig. 1.3).

Figure 1.3: Cases Closed Against Growers and Contractors in Base States (1985-88)



Grantee Opinions About Case Disparity

We could not determine the reasons for the higher frequency of actions against growers in Maryland, Pennsylvania, Virginia, and West Virginia, and we do not know whether full access to grantee case files would have enabled us to do so. We asked grantee officials in these states, as well as in Florida and Texas, why attorneys in eastern stream states closed a greater percentage of legal actions against growers than attorneys in other stream states. They cited the following factors:

- The expertise of grantee staff affected the number of employment cases handled. Grantees for some of the eastern stream states employed a core of attorneys and paralegals with extensive knowledge of farmworker statutes. Other grantees employed attorneys less able because of comparative lack of experience or training, or because of greater case volume, to take on relatively complex employment litigation in federal court.
- Agricultural employers in eastern stream states grew more hand-harvested crops. Jobs associated with hand-harvested crops command lower wages and thereby make minimum wage issues more common. In contrast, agricultural employers in western states used more mechanization, and farmworkers were more highly skilled and better paid.
- The eastern stream of migrant farmworkers consisted predominantly of single males, who generally used employer-provided housing, which was

often subject to federal and state health code inspections. In western states, farmworkers were more likely to migrate with their families and use public housing.

- The eastern stream states used a greater percentage of farm labor contractors, who have a history of noncompliance with farmworker law. Under current law, growers may be liable as "joint employers" for violations committed by farm labor contractors. In the west, agricultural employers were more likely to contract with farmworkers directly, thus eliminating the "middle man."
- Case priorities established by grantees had a bearing on the types of cases closed. For example, three of the four stream states in our review assigned a priority to migrant employment cases. Accordingly, the caseload in these states consisted of a higher percentage of employment cases when compared to other stream states.

How Do Grantees Set Case Priorities, and Are They Being Followed?

LSC regulations require grantees to (1) set periodically and (2) review and report annually their priorities for case acceptance. The regulations, however, allow grantees considerable flexibility in establishing priorities. As a result, the priority-setting processes followed by the six migrant grantees we reviewed varied widely. A comparison of 1987 and 1988 migrant CSR data for six grantees showed that they generally closed cases that fell within their established priorities.

Priority-Setting Procedures

The Legal Services Corporation Act and LSC regulations require grantees to assess periodically the needs of eligible clients and establish priorities for allocating resources. Grantees are required to obtain information from staff members, clients, members of the grantee's governing board, private attorneys, social service agencies, and other interested parties through questionnaires, surveys, and meetings. The grantees' governing boards are required to establish priorities based on the needs assessment results and other factors, including the eligible client population and available grantee resources. The governing board is required to review the priorities at least annually and submit the same or revised priorities to LSC as part of its annual funding application. Neither the law nor regulations require grantees who receive funding for special groups, such as migrants or Native Americans, to establish separate priorities for these special groups.

LSC regulations give grantees considerable flexibility in setting priorities. For example, the regulations permit grantees to establish broad priorities based on different clients' needs and to provide legal services in cases outside established priorities. Issues not addressed in the regulations include: (1) frequency of conducting client community needs assessments, (2) designing survey questionnaires, (3) assigning weights to identified client needs in relation to each other and all other factors, (4) setting the number of priorities, (5) ranking priorities, and (6) allocating resources among priority areas.

LSC officials acknowledged that under the regulations, a grantee may establish a broad set of priorities that covers the entire range of legal problems encountered by eligible clients. This makes it difficult for LSC monitors to determine whether grantees are effectively allocating their resources.

Priority Setting and Case Closure Varied Among Migrant Grantees

Priority-setting procedures followed by the six migrant grantees in our review varied widely, ranging from permitting each branch office[1] to have its own migrant priorities to applying priorities set for a grantee's basic field program to its migrant program. The other four grantees adopted priorities based on (1) the types of migrant cases received over the years, (2) concerns expressed by migrant clients, or (3) a combination of the procedures used by other grantees. One grantee identified all 10 of the legal problem categories used in LSC's CSR system as its priorities. See figure 3.1 for the 10 CSR categories.

According to grantee officials, the primary factors they considered in accepting cases were the client's income and whether the client's legal problem fell within established priorities. Some grantees also considered other factors, such as the merits of the case, attorney time required, the number of clients affected, and resources of the defendant. Under LSC regulations, however, grantees may establish broad priorities and, thus, may accept virtually all types of cases. Further, the regulations do not prohibit grantees from accepting cases not within established priorities.

We compared 1987 and 1988 migrant CSR data reported by the six grantees to determine the extent to which the cases they closed fell within their established priorities. For the most part, grantees closed cases that fell within their established priorities. For example, 96 percent of the Pennsylvania grantee's closed cases fell within its established priorities, while about 85 percent of the Maryland grantee's closed cases were reported within its three priority areas.

Appendix III discusses the priority-setting process and case closure results for the six grantees in our review.

[1]To provide legal services more efficiently, grantees generally established a central (administrative) office as well as a number of branch or secondary offices.

What Farmworker Issues Are Most Often Pursued by Grantee Attorneys and Labor Investigators?

According to grantee officials, typical farmworker issues cited in disputes with growers included failure to pay wages for hours worked and other wage-related issues, failure to pay minimum wage rates, misrepresenting working conditions, and violating housing standards. Our review of 43 offer-of-settlement letters (with information deleted) sent to growers disclosed that grantee attorneys cited violations involving employment conditions disclosure, minimum wage rates, housing standards, prompt payment of wages, and record keeping. Due to methodology and access-to-records limitations, however, we could not verify that, overall, these were the most frequently cited provisions. However, the Department of Labor found similar violations during its 1988 compliance investigations of agricultural employers and farm labor contractors under AWPA.

Major Federal Laws

According to LSC officials, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) and the Fair Labor Standards Act (FLSA) are the two major federal laws that govern the employment relationship between migrant farmworkers and agricultural employers. Grantee attorneys usually cited provisions of both laws in bringing legal actions against growers because factors involved in supporting a minimum wage claim under FLSA also often constitute independent violations of AWPA. For example, the usual minimum wage claim also often involves a claim of inaccurate wage and hour record keeping, a separate AWPA violation.

AWPA allows farmworkers to bring suit (for AWPA violations) in federal court to recover the amount of actual damages or up to $500 per violation in statutory damages. AWPA violations include the misrepresentation of or failure to disclose employment conditions to workers, breach of working arrangements, failure to prepare or maintain employee wage records or provide wage statements to workers (record keeping), failure to pay wages when due, and failure to comply with housing safety and health standards. There are no provisions in AWPA for prevailing parties to recover attorney fees.

FLSA allows farmworkers to bring suit in federal court when employers fail to pay the prevailing minimum wage rates. Workers can be awarded the amount of their unpaid minimum wages, plus an amount equal to that sum as liquidated damages. FLSA also requires the court to allow for the payment of attorney fees to attorneys of prevailing employees.

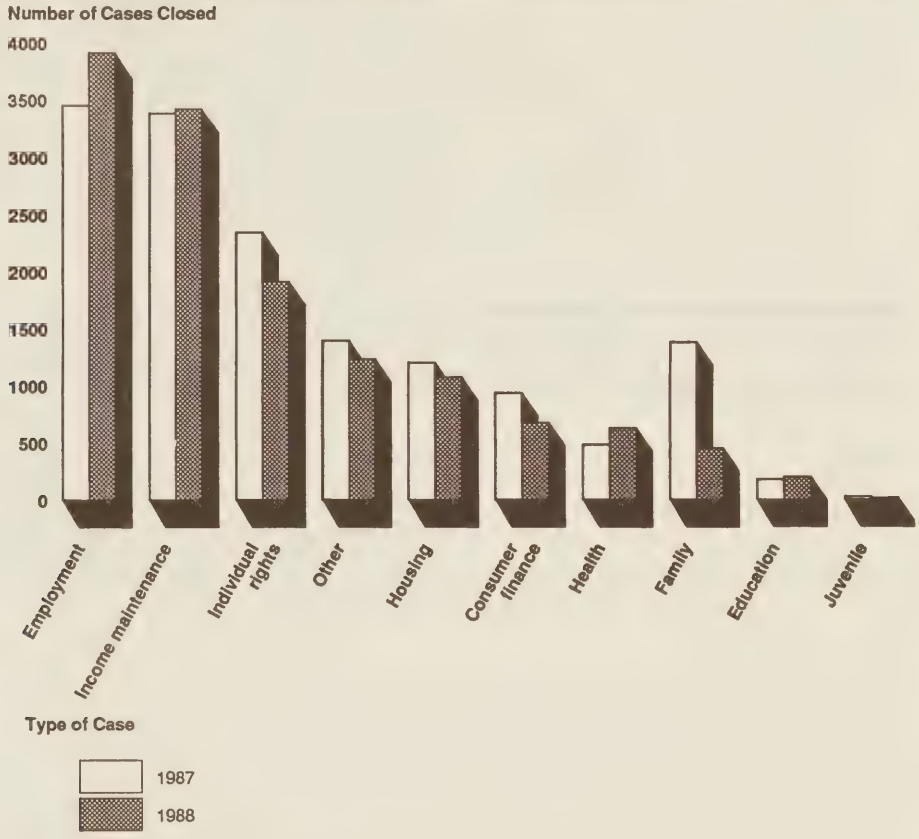
Migrant Program Data

LSC's CSR system collects two types of information on individual cases: the type of legal problem and the major reason for case closure. The system collects information on 54 legal problem areas and summarizes it into 10 major categories. For each case, grantees report the problem type that best describes the case and why it was closed. We used these data to determine the legal problem areas reported by migrant grantees from 1985 to 1988.

For 1985 and 1986, income maintenance cases represented the most common migrant legal problem, and migrant employment cases[1] ranked second. In 1987 and 1988, however, employment cases represented the most common legal problem pursued by grantee attorneys, and income maintenance ranked second. Figure 3.1 provides the comparative rankings for 1987 and 1988.

[1]Income maintenance cases include claims for food stamps, social security, unemployment, veterans, and workers' compensation benefits, while migrant employment cases include primarily wage claims and violations of employment conditions.

Figure 3.1: Types of Migrant Cases Closed (1987-88)



Note: "Other" cases include torts, wills, and estates.

Most Common Farmworker Issues

Neither LSC nor its grantees gathered data on the number of legal actions specifically initiated against growers. However, according to grantee officials, cases classified in LSC's CSR system as employment generally involved violations of AWPA or FLSA and represented migrant farmworkers' disputes with growers for their own actions or those of contractors they employed. According to grantee officials, typical farmworker issues included (1) not paying wages for all hours worked, (2) not paying wages promptly, (3) not making payments for Social Security and unemployment insurance (not an AWPA or FLSA violation), (4) not paying minimum wage rates, (5) misrepresenting working conditions, and (6) not meeting applicable housing standards.

To gain further insight into the types of farmworker issues pursued by grantee attorneys, we obtained examples of offer-of-settlement letters sent to growers by six grantees. Because we did not have access to grantee files, the grantees selected sample letters for our review. Therefore, they should not be considered representative of all offer-of-settlement letters. Our review of the 43 letters, however, showed the most frequently cited issues were record keeping, employment conditions disclosure, minimum wage rates, housing standards, and prompt wage payment.

Department of Labor Investigations

From October 1, 1987, through September 30, 1988, Labor's Wage and Hour Division conducted 5,041 AWPA compliance investigations and found 6,258 violations. About 66 percent of the violations involved the following farmworker issues: housing standards (1,476); employment conditions disclosure (1,409); and record keeping (1,292). These three types of AWPA violations were also among those commonly cited in the grantee offer-of-settlement letters we reviewed. Comparable information regarding Labor investigations of violations under FLSA was not maintained.

To What Extent Do Grantee Attorneys Attempt to Avoid Litigation by Negotiating Settlements?

Our review of 1987 and 1988 statistics reported on LSC's CSR system showed that over 80 percent of migrant employment cases[1] nationwide that culminated in a negotiated settlement or a decision during this period were reported as involving negotiated settlements. The 1988 statistics reported for Maryland, Pennsylvania, Virginia, and West Virginia for employment cases decided or settled with negotiation were lower than the national rate. Without access to grantee files, we could not determine whether attorneys attempted negotiation in all farmworker disputes with growers, nor could we identify the extent to which third-party forms of dispute resolution, such as mediation or arbitration, were used. According to grantee officials, however, they routinely attempted to negotiate disputes before initiating litigation. Such efforts included offer-of-settlement letters, telephone calls, and meetings.

AWPA Provision Concerning Negotiation

Section 504(c)(2) of AWPA (29 U.S.C. 1854(c)(2)) provides that in determining the amount of damages to award, courts are authorized to consider whether an attempt was made to resolve the dispute before litigation. In view of this provision, it seems beneficial for both parties to attempt to negotiate a settlement before initiating litigation.

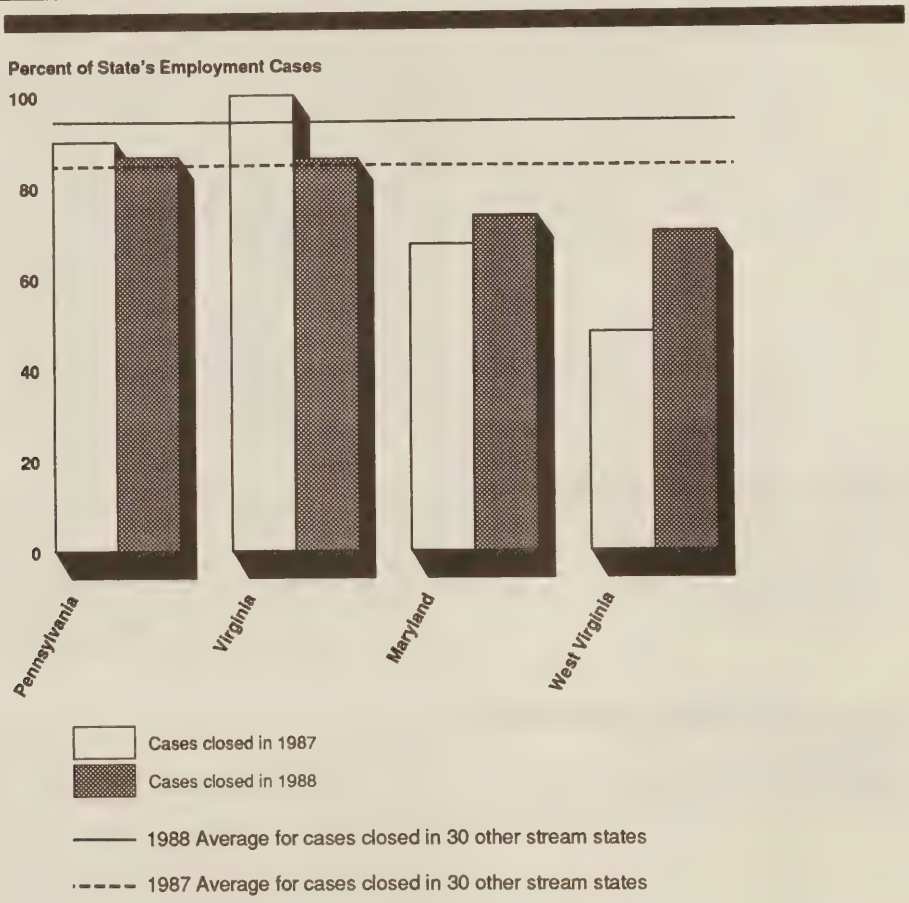
Willingness of Grantees to Negotiate

Our review of reported CSR employment data showed, on a nationwide basis, that 860 (80 percent) of the 1,079 cases settled or decided in 1987 and 1,172 (87 percent) of the 1,343 cases settled or decided in 1988 were reported as negotiated settlements with or without litigation. For our analysis, employment cases decided or settled included the following categories of closed cases from the CSR: "negotiated settlement without litigation," "negotiated settlement with litigation," "administrative agency decision," and "court decision."

In 1987 and 1988 migrant grantees providing legal services in the stream states of Pennsylvania and Virginia negotiated settlements in employment cases at about the same rate as grantees in 30 other stream states. In this period, migrant grantees in the stream states of Maryland and West Virginia, however, decided or settled employment cases with negotiation at a lower rate than grantees in 30 other stream states. (see fig. 4.1).

[1] We based our analysis on the number of migrant employment cases reported by each grantee in LSC's CSR system. Grantee officials told us that employment cases primarily involved legal cases against growers and farm labor contractors.

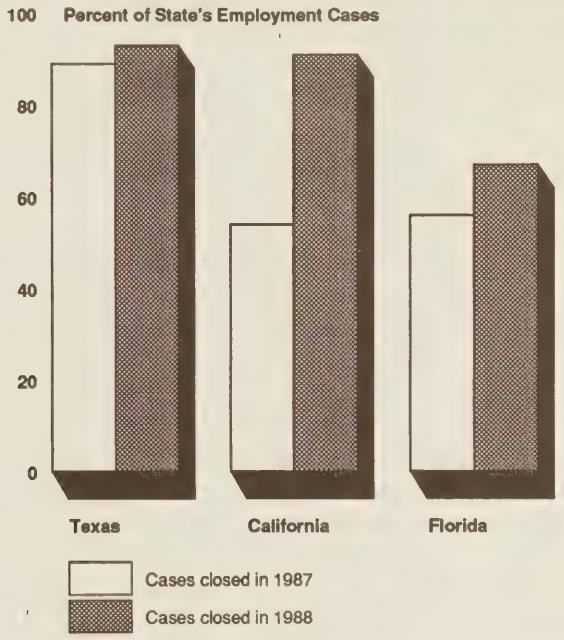
Figure 4.1: Employment Cases Settled Through Negotiation in Stream States (1987-88)



Concerning the base states, in 1988, migrant grantees in Florida generally negotiated settlements in employment cases at a lower rate than did the grantees in California and Texas (see fig. 4.2).

Grantee officials suggested that CSR statistics may underestimate the actual extent of negotiation because cases closed for other reasons, such as client refusal to proceed with a case or insufficient merit to proceed with a case, could also involve efforts at negotiation. Also, cases ultimately decided in court or by an administrative agency may involve negotiation. Under LSC's CSR system, grantees do not identify third-party forms of dispute resolution, such as mediation or arbitration.

Figure 4.2: Employment Cases Settled Through Negotiation in Base States
(1987-88)



Although grantees had no written policies, officials told us that they made efforts at prelitigation settlement in virtually every farmworker case. They indicated that their normal practice involves sending a letter to the grower outlining the violations, requesting payment, and inviting him or his attorney to respond. Settlement efforts also included telephone calls and informal meetings. One grantee considered the failure to negotiate to be malpractice and, another, a breach of the attorney's fiduciary responsibility.

Our review of 43 offer-of-settlement letters with certain information deleted disclosed that, in 41 instances, the grantee attorney invited the grower or his attorney to discuss and settle the issues. The other two letters contained no clear request to discuss a settlement.

Do Grantee Attorneys Meet Standards of Conduct for the Legal Profession, and to What Extent Do They Identify Farmworker Names When Notifying Growers of Legal Actions?

State organizations responsible for enforcing standards of conduct for attorneys reported no public disciplinary actions against any attorneys employed by the six migrant grantees from 1985 to 1988. Since January 1989, when LSC first required migrant grantees to report malpractice actions filed against attorneys, the six grantees in our review have reported none. We reviewed 19 closed LSC case files documenting the disposition of migrant-related complaints received between 1985 and 1988. We found no evidence that LSC investigators substantiated any of the 19 complaints of alleged improper conduct by grantee attorneys. We also asked the appropriate Delaware organization whether it had a public disciplinary record on any of the migrant attorneys that the Legal Aid Bureau, Inc. (LAB), employed during this period. It had no record concerning the names we provided.

According to grantee officials, unless the migrant farmworkers fear retaliation from either a crew leader or the grower, they generally release farmworkers' names to growers and their attorneys. Because we did not have access to grantee files, we could not identify the extent to which grantee attorneys did identify the farmworkers they represented when notifying growers of legal actions against them.

State and Federal Oversight of Ethical Conduct

State bars or other state disciplinary organizations investigate complaints of unethical conduct by licensed attorneys. According to these organizations in the six states in our review, no public disciplinary actions were reported against any of the migrant attorneys employed by the six grantees from 1985 through 1988. The number of migrant attorneys employed during this period ranged from 3 for the grantee in West Virginia to 27 for the grantee in Texas. In no instance were any of these attorneys identified as the subject of a public disciplinary action.

Officials of several grantee organizations commented that Rule 11 of the Federal Rules of Civil Procedure provides a measure of protection against attorney misconduct. Rule 11 authorizes imposing sanctions against any lawyer who files a lawsuit (1) without making reasonable inquiry into both the facts of the case and pertinent laws and (2) subsequently reaching a well-founded professional judgment that the claim has a valid basis.

LSC Requirement to Report Malpractice Actions

Beginning January 1, 1989, as a condition of each migrant grant, LSC required grantees to report any malpractice action filed against their attorneys. As of January 1, 1990, 16 grantees had provided such a notice to LSC; however, only one involved a migrant grantee. The California Rural Legal Assistance, Inc.—not one of the migrant grantees included in our review—reported the action, which is currently in litigation. Before January 1, 1989, LSC reviewed malpractice actions filed against grantee attorneys during routine monitoring visits.

Review of Closed LSC Migrant Complaint Files

To further determine whether grantee attorneys acted unethically, we reviewed LSC case files documenting the disposition of 19 closed migrant-related complaints received between 1985 to 1988. The allegations included harassment, inadequate representation, violation of rules and regulations, and intimidation. Our review of the 19 files and records disclosed the following: 4 were investigated and closed as unfounded; 2 were closed due to a lack of a response from the complainant; 1 was considered too general to merit an investigation; and 12 were closed by remarks indicating that disposition of the complaints would be contained in the next LSC monitoring report. However, we obtained the appropriate reports, and they did not discuss the allegations or the disposition of the complaints.

Grantees' Release of Farmworker Names

Grantee officials stated that their attorneys generally released the names of farmworkers involved when growers or their attorneys were notified of a dispute. They added that even when initially withheld, the names must eventually be released if the case is pursued in court. Courts treat the name of the plaintiff as public information. Grantee officials acknowledged that farmworker names may be initially withheld in cases where the farmworkers fear retaliation from either a crew leader or the grower.

Our review of 43 offer-of-settlement letters provided by grantee attorneys disclosed that attorneys generally included the names of the individuals in the letters. For letters not specifically listing names, attorneys usually indicated the number of individuals involved. Providing this information is sometimes sufficient for the grower to identify the complaining farmworkers. Without access to the grantees' case files, we could not determine whether the letters we were provided were representative of all offer-of-settlement letters.

What Portion of LSC Migrant Grants Are Spent for Litigation?

According to audited financial statements for 1987 and 1988, litigation expenditures (except for personnel salaries) by five of the six LSC migrant grantees in our review ranged between $705 and $23,238. The Texas grantee's expenditures were much higher, amounting to $93,667 and $165,004 for these 2 years. We could not determine the portion of these funds spent in litigating cases against growers.

LSC Funds Used for Litigation

According to LSC's Audit and Accounting Guide for Recipients and Auditors, grantees are expected to track grant funds spent on litigation costs. Litigation costs include the costs of recording depositions and transcripts, filing fees, expert witnesses, and any other litigation expenses paid by the grantee rather than the client. Attorney and support staff salaries are not included.

To determine the amount of LSC migrant funds that each of the six grantees spent on litigation, we reviewed audited financial statements for 1987 and 1988. Table 6.1 shows the amount of LSC funds used for litigation in calendar years 1987 and 1988.

Table 6.1: LSC Migrant Funds Used for Litigation

Grantee	1987	1988
Friends of Farmworkers, Inc. (FOF)	$705	$2,052[a]
West Virginia Legal Services Plan, Inc. (WVLSP)	2,175	1,335
Peninsula Legal Aid Center, Inc. (PLAC)	3,665	(1,089)[b]
Legal Aid Bureau, Inc. (LAB)	7,257	2,509
Florida Rural Legal Services, Inc. (FRLS)	4,503	23,238
Texas Rural Legal Aid, Inc. (TRLA)	165,004	93,667

[a]Obtained from grantee's 1989 refunding application.

[b]This negative amount includes adjustments to prior years' litigation costs.

Because grantees do not maintain data on litigation costs by type of litigant, we could not determine the portion of these funds spent in litigating cases against growers. Litigation costs were also paid with private funds, but we did not analyze the use of these funds.

What Controls Are in Place Over Grantee Client Trust Accounts?

Various rules govern attorney responsibilities over the receipt and disbursement of funds collected for clients through legal actions. The six states in our review had rules that generally paralleled or exceeded model rules published by the American Bar Association (ABA). Also, LSC developed an audit and accounting manual that requires grantees to use certain control procedures for monitoring and managing trust accounts—grantee accounts in which funds paid by growers are held until farmworkers are paid. All six grantees adopted some internal controls to assure the proper receipt, accounting, and expenditure of trust funds held in escrow for their represented clients.

The grantees handling the largest migrant caseloads—the base states of Texas and Florida—adopted the most comprehensive controls. Grantees in the stream states of Maryland, Pennsylvania, Virginia, and West Virginia had a smaller number of cases resulting in payments to client trust accounts and adopted less comprehensive controls.

LSC officials believed that applicable state bar rules, supplemented by the LSC guidance, combined with the internal controls adopted by grantees were generally adequate to ensure the proper maintenance of funds held in trust accounts for migrant farmworkers. Because we did not have access to account records, we were unable to verify that the grantees had properly implemented these procedures or that the procedures provided adequate controls over the accounts.

State Rules

The six states had rules that generally paralleled or exceeded ABA rules. The ABA Model Rules of Professional Conduct impose three duties on attorneys relating to the receipt and disbursement of funds or property: (1) to notify promptly a client or third person when funds are received; (2) to deliver promptly any funds that the client or third person is entitled to receive; and (3) to provide, upon request, a full accounting of clients' or third persons' funds being held.

In addition, all six state organizations required attorneys to keep clients' funds secure and separate from all other funds. Several of the state organizations also required attorneys to (1) file an annual statement identifying the financial institution where client funds were held; (2) authorize the financial institution to notify the bar when a trust account was overdrawn; and (3) protect third party claims, such as client creditors, from wrongful interference by the client.

LSC's Responsibilities

LSC's monitoring office periodically assesses whether grantees are in compliance with the provisions of the LSC act, regulations, and other applicable laws. Draft reports are provided to grantees for comment, and final reports are available to the public.

LSC's Audit and Accounting Guide for Recipients and Auditors contained detailed information on accounting and internal control procedures, ineligible costs, and financial statement and audit requirements. LSC required grantees to use the guide in monitoring trust fund accounts. LSC's monitoring visits to grantees include efforts to identify errors and omissions in grantee operations and internal controls.

Grantee Internal Controls Varied

In addition to the state rules and LSC guidance, the six grantees adopted a combination of the following 15 controls over trust accounts: (1) client settlements deposited in and disbursed from a trust account; (2) identity of the client verified before check issuance; (3) subsidiary ledger maintained in the branch offices; (4) parent general ledger maintained in the central office; (5) subsidiary ledgers reconciled by central office staff; (6) subsidiary ledgers audited by central office staff; (7) bank statements including canceled checks sent directly from the bank to the central office; (8) separate trust accounts maintained by the branch offices; (9) endorsements on trust account checks verified by central office staff; (10) endorsements on trust account checks verified by an independent accountant during an annual audit; (11) trust account disbursements approved by two staff members; (12) two signatures required on trust account checks; (13) detailed receipt and disbursement procedures established; (14) trust fund settlements older than 1 year deposited in an inactive trust account; and (15) an audit committee established.

Each of the six grantees we reviewed had established trust accounts to separate client funds from grantee funds and maintained and reconciled subsidiary ledgers in branch offices. The internal controls adopted by each grantee are shown in table 7.1.

Table 7.1: Trust Account Controls Adopted by Six Grantees

Controls	Grantee					
	FOF	LAB	WVLSP	PLAC	TRLA	FRLS
Trust account established	X	X	X	X	X	X
Client identity verified before check issuance						X
Subsidiary ledger in branch office(s)	X	X	X	X	X	X
General ledger in central office	X		X	X	X	X
Subsidiary ledgers reconciled by central office	X	X	X	X	X	X
Subsidiary ledgers audited by central office		X	X	X	X	X
Statements/canceled checks sent to central office	X	X			X	X
Separate accounts established by branch office(s)		X	X	X	X	
Check endorsements verified by central office			X		X	
Check endorsements verified by independent accountants				X	X	X
Disbursements approved by two staff members	X				X	X
Two signatures required on checks	X	X	X	X	X	
Receipt/disbursement procedures in writing		X	X		X	X
Inactive trust fund account established					X	
Audit committee established	X	X	X	X	X	

Views of LSC Officials

LSC officials were aware of the differences in internal controls over trust fund accounts among the grantees. They believed that the state rules and LSC guidance, supplemented by the specific internal controls adopted by each grantee, are generally adequate to ensure that farmworker trust fund accounts are properly maintained. However, they recognized that internal controls can sometimes be circumvented and noted that two of the six migrant grantees included in our review recently reported losses in their client trust funds. In 1989, one grantee reported the loss of $800 as a result of an inadvertent error made by the attorney handling the case. In 1990, another grantee reported the loss of $16,900 as a result of forgery by an office manager. In both circumstances the grantees reported actions taken to recover the missing funds.

What Role Does the Migrant Legal Action Program Play, and How Does It Support Grantee Activities?

The role of the Migrant Legal Action Program, Inc. (MLAP), is, in part, to provide legal and technical assistance to grantees serving migrant and seasonal farmworkers. In complex cases, migrant grantees may request an MLAP attorney to either take a farmworker case or act as cocounsel with one of its attorneys. In 1988, MLAP received a grant of $547,649 from LSC. Although MLAP officials are not required to report actual amounts spent on functional activities, they estimated that about 38 percent of this funding was spent in representing or acting as counsel or cocounsel for migrant farmworkers.

Role of MLAP

MLAP is 1 of 16 national support center grantees funded by LSC. Each national support center concentrates its activities either on certain subject areas, such as consumer or housing law, or on services to specific client populations, such as migrant farmworkers. National support centers provide direct support and technical assistance to LSC's more than 300 basic field and special grantees, as needed.

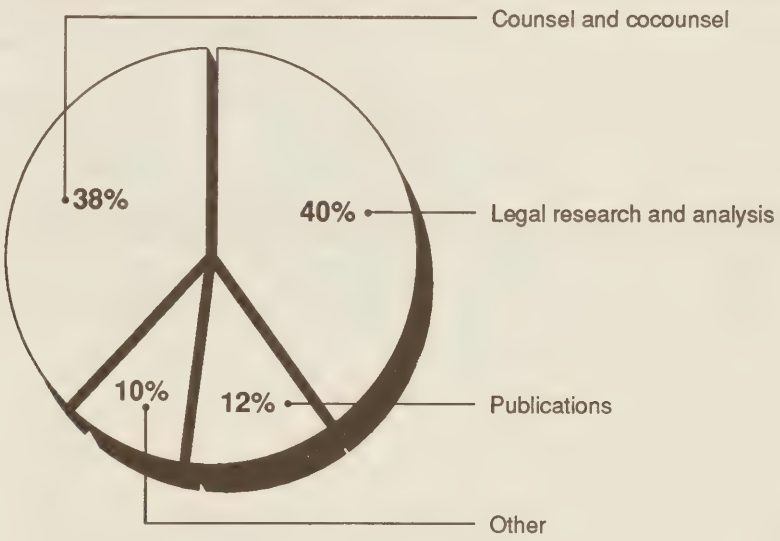
MLAP, located in Washington, D.C., was established in January 1971 and provided legal assistance directly to migrant and seasonal farmworkers and legal services to attorneys serving migrant and seasonal farmworkers throughout the country. MLAP was first funded by LSC in 1975, shortly after LSC began its operations, and, as a national support center, MLAP provided direct support and technical assistance to LSC's 42 grantees that serve migrant and seasonal farmworkers. MLAP's support and technical assistance includes (1) serving as counsel (at the request of a migrant grantee) for eligible clients or as cocounsel with grantee attorneys, (2) researching and preparing memoranda on selected legal issues, (3) writing or updating resource materials, such as its Farmworker Law Manual, that outline and describe migrant and seasonal farmworker laws, (4) training new field staff personnel in national and regional training programs on migrant and seasonal farmworker issues, (5) recruiting new staff for field grantees, and (6) providing technical assistance on program structure and management to basic field grantees.

MLAP is governed by a 15-member board of directors, who serve 3-year terms. In 1988, MLAP's funding from LSC sources totaled $576,696, derived from its $547,649 grant, interest and investment income, carryover from 1987, and a grant from the National Migrant Litigation Fund (LSC-originated funds). Other sources of funding totaling $30,237 represented 5 percent of MLAP's funding and came primarily from interest forgiveness of a liability and private contributions.

Services Provided and Funds Allocated

The primary services MLAP provided and the estimated percentage of LSC funding expended on each activity during fiscal year 1988 (as reported in its 1989 funding application) are shown in figure 8.1. Because MLAP is not required to account for actual amounts spent on these activities, the percentages shown in the figure are MLAP officials' best estimates for 1988.

Figure 8.1: Estimated MLAP LSC Spending (1988)



MLAP Priorities

MLAP priorities, which reflect program needs, have changed little over the past 3 years. In its 1989 funding application, MLAP stated that its priorities were AWPA, temporary foreign worker program, FLSA, pesticides, employment rights, income transfer programs and taxes, other support areas, migrant education, assistance to client-eligible organizations, and housing.

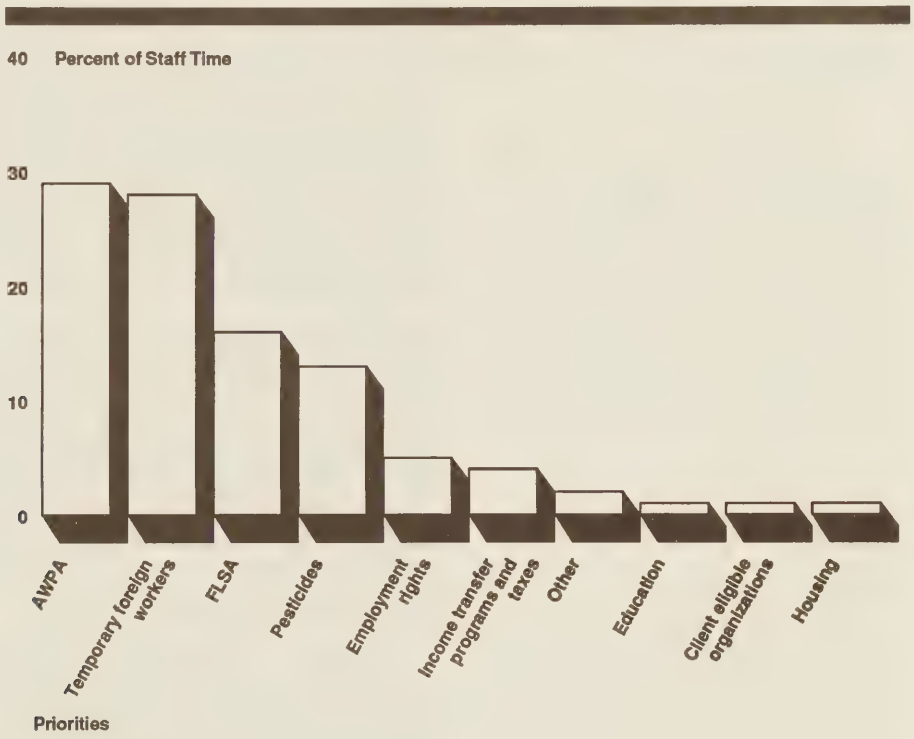
Allocation of Staff and Funding Resources to Priority Areas

MLAP's staff consists of five attorneys (the executive director and four staff attorneys), and 10 support staff (an office manager, secretaries, law clerks, a bookkeeper, and a librarian.) Each of MLAP's attorneys, including the executive director, is assigned one or more priority areas. This area is determined by (1) an attorney's expertise or interest and (2) the resources needed in a given priority area.

An MLAP official told us that staff time is allocated to each priority area by estimating the resources needed to support it. He indicated that because there are no LSC regulations on how staff time should be allocated to each priority area, allocation is flexible and much of it depends on: the needs of the area, staff attorneys' areas of expertise, number of staff attorneys, other available resources, and a particular situation at a given time. For example, the temporary foreign worker program, which has generated numerous inquiries and requests for MLAP assistance, is a priority area that is time intensive and involves a great deal of litigation. Therefore, an attorney with expertise in this program would spend considerable staff time in that priority area.

Funding allocations for each priority area are based on staff allocations. For example, a priority area staffed by the highest paid attorney or more than one attorney would require more funding than another area. Figure 8.2 shows MLAP's percentage of staff time on each priority area in 1988. The percentages were estimated by MLAP officials, based on staff assignments, because they are not required by LSC to maintain records of actual staff time charges, by priority area.

Figure 8.2: Estimated Use of MLAP Staff Time (1988)



According to its quarterly reports, MLAP was involved in 24 migrant grantee cases either as counsel or cocounsel in calendar year 1988.

Grower Case Studies

No centralized source of data exists to determine the effect of grantee attorneys' representation of migrant farmworkers on the grower community. To provide some insight, we conducted case studies of five growers' experiences with grantee attorneys selected from the six states in our review. The cases were selected from those identified by congressional staff members, LSC migrant complaint files, or grower associations and those willing to discuss their case with us. Some growers we contacted said they feared that additional legal actions might be initiated against them and declined to participate.

The information developed represents the perspective of only these five growers and may not be representative of the experiences of other growers who have interacted with grantee attorneys. Where applicable, each case study summary includes a section describing the extent to which the growers complied with AWPA and FLSA requirements based on Labor compliance officers' investigations. Also, we discussed the experiences of the five growers in our case studies with grantee officials to give them the opportunity to respond and furnish their perspectives surrounding the facts and issues.

In summary, the five growers attributed different effects, at least in part, to grantee legal activity. All five claimed a direct economic cost ranging from $2,215 in the case of grower A to over $100,000 in the case of grower E.

The primary issues in the five case studies, which paralleled those identified by grantee officials as the most often cited in migrant farmworker cases, included the failure to (1) pay minimum wage rates, (2) pay wages when due or for all hours worked, (3) provide written disclosure of working conditions, and (4) keep adequate records.

Grantee attorneys attempted to negotiate a settlement with each grower, although two growers' cases were ultimately litigated. Two growers believed that the grantees' offer-of-settlement letters placed them in a no-win situation, requiring them to either pay the compensation amounts requested (or some lesser amount reached by negotiation) and, in effect, admit guilt or incur large legal fees to defend themselves in court.

Labor compliance officers investigated four of the five growers in our review and charged them with violations. Only growers A and C, however, were assessed fines.

Grantee officials provided an explanation for their actions in each of the disputes and believed the actions taken by their attorneys were proper.

Effects Growers Attributed to Grantee Legal Activity

The five growers attributed different effects, at least in part, to grantees' legal activity. All five claimed a direct economic cost ranging from $2,215 in the case of grower A to over $100,000 in the case of grower E. One grower said that grantee legal activity was a factor in his decision to retire from farming, another said grantee legal activity contributed to his decision to sell his farm, and a third said that grantee legal activity was a factor in his decision to sell about 60 percent of his fruit tree acreage. Three of the five growers partly blamed grantee activity for losses they incurred in either productivity or crop quality. In addition, four of the five growers said they incurred indirect costs because of grantees' legal activities.

Farmworker Issues

The issues in the five case studies paralleled those identified by grantee officials as the most often cited in migrant farmworker cases. Specifically, these included the failure to (1) pay minimum wage rates, (2) pay wages when due or for all hours worked, (3) provide written disclosure of working conditions, and (4) compile or maintain accurate wage records. In four of the five case studies, crew leaders' actions were the focus of the farmworkers' disputes.

Negotiation Attempts

Grantee attorneys attempted to negotiate settlements with each of the five growers, although two growers' cases were ultimately litigated. After accepting information from grower A, the grantee attorney reduced the settlement offer from $3,204 to $2,215. In grower B's one dispute, the grantee attorney made several negotiation attempts. However, grower B believed he was exempt and refused to settle. The dispute was ultimately decided in federal court with grower B prevailing. In grower C's one dispute, the grantee attorney initially requested $3,410 to settle. Ultimately, the attorney dropped some of his claims and settled for $2,500. In grower D's two disputes, overall settlement offers decreased from $530 and $12,498 to an amount less than $100 and $4,000, respectively.

Grower E's settlement experiences with a grantee attorney varied. In the first dispute, a grantee attorney requested $4,143, but the grower denied liability for the asserted violations. As a result, the attorney filed a lawsuit, but a settlement was later reached without a trial. Although

the settlement agreement required farmworker payments totaling $3,550 (a reduction of $593), grower E said he encountered additional costs totaling $12,500 for legal fees and associated accounting and class action advertising fees. In the second dispute, the grantee attorney initially requested a payment of $564 for one farmworker. The attorney subsequently reduced the claim to $250, but later added three additional farmworkers, resulting in a total claim of $1,000. The dispute was finally settled for $1,400.

In grower E's third dispute, the grantee attorney provided grower E's attorney with a draft complaint and requested grower E to respond within 10 days. Grantee officials told us that the draft complaint was sent only after telephone and informal efforts to resolve the farmworker claims were unsuccessful. The dispute was decided by a federal court, which found that the grantee's tactics of requiring the defendant to respond so quickly were not conducive to negotiations. According to grantee officials, their attorney took quick action because he believed that some of the asserted violations also represented violations of a court injunction obtained from a 1985 dispute.

In a subsequent ruling, in which the court awarded attorney fees and costs to the grantee, the court opined that settlement was effectively scuttled by the farmworkers counsel's insistence that the settlement be tied into an earlier dispute. Grantee officials told us they disagreed with some of the judge's analysis and filed a motion for reconsideration.

Growers D and E said that grantee offer-of-settlement letters placed them in a no-win situation of either paying the compensation amounts requested and, in effect, admitting guilt, or incurring large fees to defend themselves in court. These two growers contrasted their situations to that of the migrant farmworkers, who received legal representation at no cost.

Results of Labor Investigations

Labor Department compliance officers inspected growers A, C, D, and E. They charged growers A and C with AWPA violations (failure to meet housing safety and health standards) and charged their crew leaders with minimum wage rate violations. For failing to comply with 13 housing standards, grower A was fined $350, the amount as reduced after appeal. Grower C was fined $725, as reduced after appeal, for failing to comply with eight housing safety and health standards, compile and maintain payroll records, and ensure compliance with worker transportation protections.

Labor compliance officers charged grower D with AWPA violations, including the failure to (1) post an AWPA poster and (2) comply with seven housing safety and health standards. Grower D agreed to future compliance and was not fined.

Labor compliance officers charged grower E with both AWPA and FLSA violations. Because grower E paid the back wages due the farmworkers and agreed to future AWPA compliance, a fine was not assessed.

Grantee Comments

The perceptions of grantee officials differed from those of the five growers concerning the events surrounding the farmworker disputes. For example, the officials provided explanations for their actions in each of the disputes and, in the case of grower E, questioned some of the costs that the grower attributed to their attorney's actions. In addition, the grantee officials believed the actions their attorneys took were justified and in accordance with the legal profession's standards of conduct.

Separate summaries of each of the five cases are presented in appendix IV.

LSC History and Relevant Legislation

The Legal Services Corporation—a nonprofit, federally funded corporation—has been responsible for providing free legal assistance to the financially disadvantaged since the Congress established it in 1974. It inherited all legal programs authorized by the Economic Opportunity Act, including 11 migrant programs originally funded through the Office of Economic Opportunity.

LSC does not provide legal services directly to the disadvantaged. Rather, it is authorized to make grants or establish contracts to provide financial assistance to organizations furnishing legal assistance to people below a maximum income-eligibility level. In fiscal year 1988, LSC received funds totaling $295 million to support, among other things, 285 basic field grantees that provided services to all types of needy clients, 42 grantees that provided services to migrant and seasonal farmworkers, and 32 grantees that provided services to Native Americans. Fiscal year 1988 migrant funds totaled $9.4 million. Of the 42 grantees that received migrant funds, 40 also received basic field funds to provide legal services to other needy clients.

Of the 42 migrant grantees, 4 are considered to be in "base states"—California, Florida, Texas, and Puerto Rico—where many migrant farmworkers maintain permanent residence during the nonharvest season. The other 38 migrant grantees are in "stream" states, to which migrants (1) travel to find work and (2) live temporarily away from their permanent residences.

To provide overall data on each grantee for the period 1985-88, table I.1 shows the total number of closed cases, the level of each grantee's funding for the 4 years, and the yearly estimated migrant population per state.

Table I.1: Migrant Grantee Data, by State (1985-88)

States	Cases closed	LSC funding	Estimated migrant population
Stream states			
Illinois	2,740	$1,002,029	27,884
Maine	2,543	780,906	16,311
Washington	2,458	1,787,287	47,162
Ohio	2,432	1,107,204	32,537
Oregon	2,320	1,151,273	27,621
Arizona	2,315	1,080,064	11,809
Minnesota	2,286	1,282,075	28,971
Michigan	1,941	1,771,898	51,776
Missouri	1,640	43,151	1,365
Idaho	1,478	852,879	16,756
New Jersey	1,447	543,438	12,818
Louisiana	1,439	312,865	10,332
Montana	927	435,134	11,500
Wisconsin	923	441,968	12,777
Georgia	918	1,210,406	31,588
New Mexico	902	391,197	7,715
Colorado	777	714,936	20,495
Maryland[a]	**663**	**397,643**	**11,500**
Wyoming	628	183,401	6,088
New York	519	1,001,467	21,467
North Carolina	511	1,104,129	26,833
Indiana	494	470,411	13,633
Pennsylvania	**494**	**219,366**	**5,809**
Nebraska	346	111,484	3,719
Oklahoma	262	345,228	9,033
West Virginia	**245**	**50,352**	**1,679**
Virginia	**219**	**286,473**	**8,303**
Iowa	201	53,941	1,623
South Carolina	154	435,134	14,363
Utah	143	158,234	4,717
Vermont	91	21,961	433
Connecticut	90	237,347	6,031
Kansas	88	226,552	5,949
South Dakota	47	21,961	185
Kentucky	1	21,957	618
New Hampshire	0	21,961	524
Rhode Island	0	21,961	171

(continued)

States	Cases closed	LSC funding	Estimated migrant population
Nevada	0	21,578	616
Stream state totals	**34,682**	**20,321,251**	**512,711**
Base states			
California	4,756	5,164,068	136,083
Florida	**6,634**	**3,520,621**	**92,758**
Texas	**9,899**	**6,792,812**	**176,792**
Base state totals	**21,289**	**15,477,501**	**405,633**
All state totals	**55,971**	**$35,798,752**	**918,344**

[a]The data for Maryland include closed cases, LSC funding, and the estimated migrant population for Delaware.

Grantee officials told us their attorneys base most of their farmworker cases on provisions of the Migrant and Seasonal Agricultural Worker Protection Act or the Fair Labor Standards Act. The Congress passed AWPA in 1983, recognizing that many migrant and seasonal farmworkers continued to be the most abused workers in the United States, experiencing historically low wages, long working hours, and poor working conditions. AWPA retained the fundamental worker protections initially passed in the Farm Labor Contractor Registration Act of 1963, which apply to persons who recruit, employ, or transport farmworkers. These protections relate to the disclosure of wages, hours, and other conditions of employment; payment of wages and compliance with other conditions of employment; record keeping; housing safety and health; and vehicle safety.

One significant change in AWPA from the earlier act made farmers and growers potentially liable for violations against farmworkers, even when employers used an independent farm labor contractor, who was not an employee, as a middleman to supply workers. A grower may be liable, as a "joint employer," for the actions of a farm labor contractor he hired, even though the contractor was independent and the grower was not directly involved in the action.[1]

Whether the grower is a joint employer depends on the facts of each case. The critical factors in making this determination are (1) how specialized the work is (the less skill needed to do the work, the more likely a finding that the grower is a joint employer) and (2) whether the crew leader is in business for himself "as a matter of economic fact."

[1]Beliz v. W.H. McLeod & Sons Packing Co., 765 F.2d 1317, 1327 (5th Cir. 1985).

FLSA protects all workers, including farmworkers, from employers who fail to pay minimum wages and who violate child labor provisions. The protections for farmworkers were added to FLSA by a 1966 amendment.

The Department of Labor can enforce AWPA and FLSA through warnings, fines, injunctions, or criminal proceedings. These actions, however, do not compensate farmworkers for losses suffered as a result of violations. Both FLSA and AWPA contain a private right of action provision under which farmworkers can bring legal actions directly against an employer for damages suffered as a result of violations. With this provision, grantee attorneys have a basis to bring suits on behalf of migrant farmworkers and can seek damages resulting from violations.

Objectives, Scope, and Methodology

Objectives

Our objectives were to address, to the extent possible, each of the questions contained in the March 9, 1989, request letter. Specifically, the requesters asked the following questions:

1. What is the comparison between the number of cases involving migrant and seasonal farmworkers in seven states (West Virginia, Virginia, Maryland, Delaware, Pennsylvania, Florida, and Texas) and the number of such cases in all other areas of the country? If the number of cases in the seven-state area is disproportionate to the number nationwide, what accounts for this?

2. How are case priorities of farmworker legal services programs set? How are the case priorities of the "basic field programs" that handle farmworker cases set? What role, if any, does LSC play in setting these priorities? How frequently are priorities reviewed? Do the legal services programs deviate from these priorities when handling farmworker cases?

3. What types of farmworker cases have been pursued by the legal services attorneys? What issues are most frequently involved? How do they compare in numbers? How often do the lawsuits initiated against growers relate directly to citations previously issued by the Department of Labor to the same growers?

4. Have the attorneys representing the migrant and seasonal farmworkers made a good faith effort to avoid litigation by initiating or agreeing to participate in mediation or other forms of alternative dispute resolution?

5. Have the methods of representation by the legal services attorneys been consistent with the standards of conduct for the legal profession? To what extent do legal services attorneys identify the names of represented farmworkers when notifying growers of legal actions initiated against them? Have any of the state or county bar associations initiated ethical investigations or disciplinary proceedings arising out of legal services' representation of migrant farmworkers?

6. What is the estimated cost of the litigation that has occurred? What are the costs to growers in attorneys' fees, settlements or judgments, and loss of harvest? Has there been a decline in the productivity of the growers that can be attributed to this litigation? Have any growers been forced out of business as a result of these legal actions? How many migrant farmworker jobs have been lost?

7. When monies are paid by growers to legal services attorneys as a result of a settlement or adjudication, what has happened to these funds? Have all the monies been given to the workers represented in the legal actions? Who audits the accounts of the legal services programs to determine if the clients actually received the funds due them?

8. What role has the Migrant Legal Action Program, a national support center, played in these activities? What is MLAP's cost per case handled? How are these costs measured? Is the measure appropriate and accurate?

9. What suggestions or recommendations do you have for reducing the costs of this representation?

Scope and Methodology

We obtained our information through: (1) discussions with LSC and Labor headquarters and Labor Region III officials; (2) interviews with selected officials of six migrant grantees (Delaware did not have an LSC migrant grantee; the Maryland grantee processed cases in Delaware); (3) analysis of LSC's case service reporting system data for calendar years 1985-88 and other reports and documents maintained by LSC headquarters; (4) analysis of fiscal year 1988 Labor Wage and Hour Division statistics on AWPA compliance investigations; (5) contacts with state bars and other appropriate state disciplinary bodies; (6) review of legislation, legislative histories, regulations, policies, and procedures governing migrant program activities; (7) case studies of five growers' experiences with grantee attorneys; and (8) review of 43 offer-of-settlement letters with certain information deleted provided by grantee officials.

We interviewed officials and reviewed records at the following locations:

- Legal Services Corporation, Washington, D.C.
- Migrant Legal Action Program, Washington, D.C.
- Community Legal Services, Inc., Philadelphia, Pennsylvania.
- Friends of Farmworkers, Inc., Philadelphia, Pennsylvania.
- Community Legal Aid Society, Inc., Wilmington, Delaware.
- Legal Aid Bureau, Inc., Baltimore, Maryland.
- West Virginia Legal Services Plan, Inc., Charleston, West Virginia.
- Peninsula Legal Aid Center, Inc., Hampton, Virginia.
- Florida Rural Legal Services, Inc., Bartow, Florida.
- Texas Rural Legal Aid, Inc., Weslaco, Texas.
- U.S. Department of Labor, Washington, D.C.
- U.S. Department of Labor, Region III, Philadelphia, Pennsylvania.

Practical and methodological constraints affected our ability to respond fully to the questions in the request letter. In addition, the attorney-client privilege and particular rules of professional conduct limited information grantees could make available to us. The privilege and rules prohibit attorneys from disclosing certain information relating to client representation, unless the client consents. The LSC act bars GAO access to any reports or records that are subject to the attorney-client privilege. Regarding the rules of professional conduct, the Virginia state bar issued an advisory opinion in November 1989 indicating that grantee attorneys were prohibited from disclosing, without consent, client information that we requested in connection with this review. Some of the grantees stated that the failure to safeguard a client's confidences and secrets from improper disclosure could result in disciplinary actions against the grantee attorney by the state organizations responsible for enforcing standards of conduct for attorneys.

Presented here are the methodologies we followed and the limitations we encountered, on a question-by-question basis.

Magnitude of Grantee Activity by State

To ascertain the magnitude of grantee activity by state, we relied on LSC's CSR data. In using these data, we assumed that grantees correctly categorized and reported closed cases. For some errors and omissions in the LSC data base (for example, missing an entire year of data for one grantee), we made adjustments based on information supplied by the grantee. However, we made no adjustments for differences in the way grantees counted cases with multiple clients. Although LSC funds a migrant and seasonal farmworker grantee in Puerto Rico and collects data on its activities, we excluded that grantee from our analysis because the request indicated an interest only in grantees located in the United States. We also excluded the four stream states of Kentucky, New Hampshire, Rhode Island, and Nevada because they received small migrant funding amounts, which primarily supported community education and outreach efforts. Except for one case in Kentucky, grantees in these four states did not close any migrant cases from 1985 to 1988. Delaware, one of the states specified in the request letter, did not have a separate migrant program. Although migrant farmworkers in this state received services from the Maryland program, CSR statistics for Delaware were not separately identified.

In presenting total migrant activity, we differentiated between "base" and "stream" states. Base states—Texas, Florida, and California—are

those where most migrant farmworkers maintained permanent residence and where they begin their migration after completing the harvesting of winter crops. During the summer, migrants traveled and worked in stream states, so called because their pattern of movement was known as the migrant stream. While migrants were away from their home base states, they often resided on a temporary basis in farm labor camps.

Neither LSC nor migrant grantees are required to maintain statistics on the number of cases initiated against growers. Therefore, we based our analysis on the number of employment cases reported closed by each migrant grantee. According to grantee officials, employment cases primarily involved actions initiated against growers and/or farm labor contractors. One grantee official estimated that 98 percent of the employment cases closed in her branch office involved either growers or farm labor contractors. Thus, the volume of LSC activity initiated against growers represents our "best estimate," given that LSC did not maintain information on the actual number of closed cases.

Priority-Setting Procedures and Case Acceptance

To determine priority-setting requirements, we reviewed the LSC act and implementing regulations. To determine the extent to which grantees accepted cases within established priorities, we obtained applicable case priorities for calendar years 1987 and 1988 from grantees and compared them to reported case closures for the same time period. Our analysis did not consider the amount of time and effort expended by grantee staff in closing each case.

We also asked grantees to describe their processes for setting priorities, annually reviewing priorities, and periodically conducting client needs' surveys to reassess priorities.

Typical Farmworker Issues

Because neither LSC nor grantees maintained or collected data on the types of actions initiated against growers, we asked grantee officials to identify the most common farmworker issues. To determine the extent of migrant program cases involving growers, we compared employment cases to total cases closed by selected migrant programs for the period 1985-88. Although we had access to publicly filed complaints, information provided by these cases would have been of limited use because they represent a small percentage of all grantee-closed cases.

To gain further insight into the types of issues brought against growers, we reviewed examples of offer-of-settlement letters grantee attorneys sent to growers over the last 5 years. Due to confidentiality concerns, grantee officials selected and provided the letters in a form that excluded identifying information. While these cannot be used as a representative sample, they provide indications of the types of issues brought against growers.

As previously mentioned, without access to grantee case files, we could not determine the names of growers and the causes of actions initiated against them in order to ascertain whether LSC actions directly related to Labor citations. However, even if we had obtained access to the information, an appropriate methodological analysis could not be developed because we could not determine the overall universe of growers cited by either grantee attorneys or Labor.

As an alternative, we explored matching the types of Labor citations with the types of lawsuits initiated by grantees in a given geographical area. The logic was that if the two coincided, it would appear more probable that lawsuits were related to Labor citations. However, we found that LSC headquarters first began collecting data on migrant court cases as part of grantee funding applications in 1987 and that the data were not comparable to data maintained by Labor.

Finally, we reviewed 1988 Labor statistics on the number and results of AWPA compliance investigations conducted by Labor's Wage and Hour Division compliance officers to identify the types of violations cited by Labor against growers.

Grantee Efforts to Negotiate

To determine the extent to which grantee attorneys attempted to negotiate with growers, we (1) asked grantee officials to describe the negotiation policies they followed, (2) reviewed a nonrepresentative sample of offer-of-settlement letters sent to growers and selected for us by grantee attorneys, and (3) analyzed CSR statistics that categorized cases involving negotiations.

We were unable to accurately determine the extent to which grantee attorneys attempted negotiation, however, because (1) LSC does not collect complete data on the extent of negotiations and (2) we could not gain access to grantee case files and records.

Grantee Attorneys' Standards of Conduct

To gain insight into the conduct of grantee attorneys, we contacted state bars and other appropriate state disciplinary organizations to obtain information regarding disciplinary proceedings involving grantee migrant attorneys. The information reported to us was limited to public disciplinary actions because state rules precluded the disclosure of private actions and pending complaints.

We reviewed all malpractice reports submitted to LSC by migrant grantees since January 1989—the date when LSC first established the reporting requirement. We also reviewed LSC files documenting the disposition of 19 closed migrant-related complaints received by LSC headquarters alleging improper behavior by migrant attorneys or programs. The 19 case files were identified by LSC headquarters officials.

To determine the extent to which grantee attorneys released the names of farmworkers they represented when notifying growers or their attorneys of a legal dispute, we (1) discussed negotiation policies with grantee officials and (2) reviewed several offer-of-settlement letters submitted to growers by grantee attorneys.

Estimated Cost of Litigation

The requesters asked us to determine the following effects of litigation: litigation costs, growers' attorney fees, growers' settlement or judgment costs, and loss of harvest. They further asked us to determine: decline in productivity, grower business failures, and loss of farmworker jobs due to litigation.

Several methodological and practical constraints prevented us from addressing these issues more fully. First, isolating and estimating many of these costs would have been extremely difficult. Second, isolating the effects of litigation costs on such outcomes as productivity loss, business failure, and loss of jobs by farmworkers would have been equally difficult. Finally, even if we were able to isolate litigation costs and their effects, the time and costs to collect these data would have been prohibitive.

For these reasons, to address these issues, we obtained audited financial statements for 1987 and 1988 provided by grantee officials that reported the amounts spent for litigation. We also used case studies that, although limited in their inferential value, were able to illustrate some possible costs and effects of litigation on the five growers whose cases we studied. The case studies are discussed in section 9.

Controls Over Client Trust Accounts

Without access to grantees' client trust account records, we could not determine the extent to which migrant farmworkers received settlement monies due them. Instead, we discussed with grantee officials the types of controls in place that, if properly implemented and maintained, should assure proper payment.

To ascertain the adequacy of internal controls employed by grantees over client trust accounts, we reviewed the American Bar Association's model rules and the rules adopted by the states over grantees' attorney client trust accounts. We also reviewed LSC's Audit and Accounting Guide for Recipients and Auditors used by grantees as guidance in establishing internal controls. Finally, we talked with LSC headquarters officials about the adequacy of grantee controls.

Migrant Legal Action Program

To determine the role of MLAP in LSC's migrant program, we interviewed MLAP officials responsible for administering the program and reviewed appropriate records. We could not determine MLAP's actual cost per case because it does not maintain information on staff time charged to individual cases. Instead, MLAP officials estimated the percentage of LSC funding spent on program activities, including representing and acting as counsel or cocounsel for migrant farmworkers.

Grower Case Studies

To obtain some insight into the effect of grantee activity on the grower community, we conducted case studies of five growers' experiences with grantee attorneys over the past 5 years. To identify potential growers for case study analysis, we solicited congressional staff members, grower associations, and LSC complaint investigation files. From these sources, we identified five growers located in three of the six states in our review willing to discuss their experiences with grantee attorneys. Several of the other growers identified were unwilling to discuss their experiences because they feared additional legal actions might be initiated against them.

In these studies, we asked the growers to (1) identify costs incurred as a result of legal actions brought against them by grantee attorneys in representing migrant farmworkers and (2) provide supporting documentation. We did not analyze the financial impacts resulting from the legal actions.

Where applicable, we also reviewed Labor Wage and Hour Division files containing the results of AWPA and FLSA compliance investigations of the

growers over the same 5-year period. We provided the growers with an opportunity to respond to our draft case summaries and incorporated their comments. We also met with grantee officials whose attorneys took the actions against the growers to discuss the case summaries and incorporated their comments.

We did our fieldwork between May 1989 and March 1990.

Grantee Priority Setting and Case Closure

The following discusses the priority-setting process as described by grantee officials and case closure results for the six migrant grantees included in our review. In determining case closure results, we compared 1987 and 1988 migrant CSR statistics with migrant case priorities established by the six grantees.

Friends of Farmworkers, Inc.

FOF, headquartered in Philadelphia, received LSC migrant funds through a subgrant agreement with Community Legal Services, Inc., the largest Pennsylvania basic field grantee, also located in Philadelphia. Community Legal approved the following 1988 migrant case priorities for FOF: employment, housing, working conditions, safety/health, public benefits, and individual rights. FOF based the priority areas on concerns raised by migrant workers during a meeting that staff conducted in Chester County in the early 1980s and has reviewed them on a periodic basis with farmworker groups. FOF staff did not use survey questionnaires because of the high illiteracy rate among migrant clients. FOF staff advised us that they refer farmworker cases falling outside of established priority areas to other organizations.

During 1987 and 1988, FOF generally accepted migrant cases that fell within its approved priorities. Specifically, in 1987, FOF closed 146 migrant cases, of which 8 fell outside its priority areas. In 1988, FOF closed 90 migrant cases, of which only 1 was not within its established priorities.

Legal Aid Bureau, Inc.

Headquartered in Baltimore, LAB received both basic field and migrant program funds from LSC. LAB established priorities for its basic field program—housing, consumer/finance, family law, and income maintenance—but according to LAB officials, all meritorious migrant client requests are accepted. They advised us that, over the last several years, LAB staff typically serviced migrant cases under the housing, employment, and income maintenance areas and that these areas were reported to LSC as the migrant program's priorities.

Of the 163 migrant cases LAB closed in 1987, 37, or about 23 percent, were outside its reported priorities. According to a former LAB official, most of the 37 nonpriority cases were immigration cases involving alien farmworkers temporarily employed in Maryland who were seeking legal advice on obtaining U.S. citizenship under the amnesty program granted by the Immigration Reform and Control Act of 1986. After reviewing drafts of the clients' paperwork, LAB attorneys referred them to the local

district office of the Immigration and Naturalization Service. In 1988, LAB closed 257 migrant cases, of which 27, or about 10.5 percent, fell outside its reported priorities; most of these were also immigration cases.

West Virginia Legal Services Plan, Inc.

Headquartered in Charleston, WVLSP received both basic and migrant program funds from LSC. In 1988, WVLSP established all 10 legal problem case categories used in LSC's case reporting system as its priorities for both basic field and migrant cases. However, it further assigned percentage rankings to each problem category and used such rankings as criteria for case acceptance. These ranged from 2 percent for cases involving individual rights to 25 percent for income maintenance cases and were based on the results of a 1984-85 needs assessment.

During 1987 and 1988, WVLSP closed 65 and 102 migrant cases, respectively. Because WVLSP's migrant priorities included all LSC case categories, none of the closed cases fell outside its priorities.

Peninsula Legal Aid Center, Inc.

PLAC, the Virginia migrant grantee headquartered in Hampton, received both basic field and migrant program funds from LSC. During the period from 1985 through the first quarter of 1988, PLAC subgranted a large portion of its migrant funding to LAB, the Maryland grantee. PLAC took this action because of the departure of its only attorney experienced in migrant issues. Under the subgrant terms, PLAC staff acted as cocounsel with LAB and provided limited services in some Virginia migrant cases that did not require significant expertise in migrant law.

PLAC reported the following migrant priorities to LSC in its 1988 refunding application: minimum wage violations (employment); social security tax violations (employment); health issues; unlawful withholding and underreporting of wages (employment); and use of foreign workers to displace domestic workers (employment). According to a PLAC official, the priorities were based on (1) problems PLAC attorneys observed over the years while visiting labor camps, (2) the history of case closures in prior years, and (3) the needs assessment surveys conducted with migrant clients as part of its 1985 basic field program needs assessment. PLAC used the priorities in considering whether to accept migrant cases beginning with the second quarter of 1988, when it terminated the subgrant with LAB.

Virginia cases closed by LAB from 1985 through the first quarter of 1988 were reported by LAB with its cases from Maryland and Delaware. In 1987, PLAC independently closed 42 migrant cases, of which only 3 fell outside their subgrantee's priorities. In 1988, PLAC closed 142 migrant cases, of which 15, or 10.6 percent, fell outside their own priorities.

Texas Rural Legal Aid, Inc.

TRLA, the Texas migrant grantee, received basic field, Native American, and migrant program funds from LSC. Headquartered in Weslaco, TRLA established 12 branch offices; 7 served only basic field clients, 4 served only migrant clients, and 1 served basic, migrant, and Kickapoo Indian clients. Branch offices conducted needs assessments every 2 years, obtaining input from eligible clients, TRLA staff, private attorneys, and leaders of local community organizations and reviewed priorities each year. TRLA's central office tabulated interview and questionnaire results from each branch office and ranked the needs. TRLA then sent the results to each branch office for consideration during priority-setting sessions advertised through the local media and open to clients. Besides the needs assessment results, branch staff and clients considered other factors, including (1) the population of eligible clients, (2) the availability of TRLA and other legal resources, (3) the history of closed cases by problem type, and (4) the probability of reaching solutions through the legal process.

Once the branch offices recommended priorities, they were submitted to TRLA's governing body for review and approval. For 1988 TRLA adopted the following overall case priorities ranked by decreasing importance: employment/working conditions, education, individual rights, income maintenance, consumer problems, family law, health, housing, and miscellaneous. In accepting new cases, TRLA considered priority rankings, the merits of the case, the estimated time required to handle the case, the number of workers affected by the problem, and the defendant's resources.

During 1987 and 1988, TRLA generally accepted migrant cases that fell within approved priorities. In 1987, TRLA closed 2,433 migrant cases, of which only 5 fell outside its priorities. In 1988, only 2 of the 2,158 migrant cases closed fell outside of approved priorities. We noted, however, that TRLA's migrant priorities included 9 of the 10 legal problem case categories identified by LSC.

Florida Rural Legal Services, Inc.

Headquartered in Bartow, FRLS received both basic field and migrant program funds from LSC. FRLS established one set of priorities for accepting cases for both basic and migrant clients. In establishing its 1988 priorities, the FRLS central office sent needs assessment questionnaires to current and past clients serviced by each branch office, branch staff members, private attorneys, and social service agencies. Representatives from each branch office then met to assess the survey results and other relevant information. These representatives recommended two levels of priorities—high and other. The FRLS governing body established housing, income maintenance, employment, individual rights, and health as high priorities and consumer/finance, family law, education, and miscellaneous as other priorities.

According to FRLS officials, incoming cases falling within the higher priority areas received preference over cases falling in the other priority level. Within each level, however, the priority areas were not ranked. Other factors involved in the case acceptance decision included the estimated cost of the case, the merit of the case, the number of clients affected, the availability of staff resources, and the defendant's resources.

Survey forms used in FRLS's 1988 needs assessment asked participants to identify the eight most important problem areas where legal help was needed. FRLS listed all 10 case category areas used by LSC on the form, as well as sub-problems within the categories. Before 1988, FRLS had last conducted a needs assessment in the early 1980s. Under its current policy, an assessment is scheduled every 3 years.

In 1987, FRLS closed 1,325 migrant cases, of which 239, or about 18 percent, were outside its approved high priorities. Of the 239 other cases, 50 were consumer/finance issues, 19 were family law, and 170 were termed miscellaneous. According to FRLS's executive director, most of the 239 cases outside of its approved priorities required only minimal legal services. In 1988, FRLS expanded its migrant priorities to include 9 of the 10 legal problem case categories identified by LSC. Of the 938 migrant cases FRLS closed in 1988, all were within its approved priorities.

Case Study Summaries

Grower A

Background

Before his retirement in 1986, grower A was the sole proprietor of a 1,000-acre farm. For the 2 years before his retirement, his primary crops were soy beans, barley, corn, tomatoes, and cucumbers. He employed about 45 migrant workers during 1985 and 1986.

Farmworker Disputes and Grantee Attorney Actions

Grower A's legal dispute with migrant farmworkers occurred in 1985. During the 1985 harvesting season, grower A hired three crew leaders and a crew of about 45 migrant farmworkers to harvest his crops. According to grower A, the crew leaders were responsible for handling the bookkeeping, paying the workers, and making social security payments. In August and September 1985, grower A received letters from a grantee attorney, who represented several farmworkers, stating that the grower had violated provisions of FLSA and AWPA and offering to settle the farmworkers' claims. According to the grantee attorney, the FLSA violation resulted from a failure to pay minimum wages when the amount due for work performed under a piece-rate pay system was less than minimum wage. The AWPA violations included inadequate disclosure of working conditions, failure to maintain accurate records on the number of hours worked by the farmworkers, and failure to provide accurate wage statements to the workers.

To settle the dispute, the grantee attorney, in November 1985, offered to drop all AWPA claims in return for (1) a promise of future compliance by grower A and (2) an agreement by grower A to pay all back wages owed the farmworkers resulting from minimum wage violations. After crediting each crew member with the highest number of hours believed worked by any farmworker for that day, the grantee attorney calculated that grower A owed about $3,204 in back wages. One of the crew leaders disagreed with the calculation and suggested an alternate method. Based on the revised method, the attorney calculated that grower A owed back wages of about $2,215 to 46 farmworkers. Grower A signed a settlement agreement in March 1986 and sent a check to the migrant grantee dated May 6, 1986.

Although he believed he should not be responsible for the crew leaders' actions, grower A agreed to an out-of-court settlement. Since grower A's legal representation was provided free of charge, the $2,215 settlement was the only expense grower A incurred in the case. Grower A cited the

possibility of continuing grantee attorney actions and Labor Department citations as factors in his decision to retire from farming.

While grower A did not believe that the grantee attorney had used any improper legal procedures, he felt he was harassed. He said that the grantee attorney entered on his property without permission, and he speculated that the attorney had convinced the workers they could get "extra money" if they signed a document. Grower A believed that the workers never approached the migrant grantee or asked for help.

According to grantee officials, migrant workers have a constitutional right to receive guests in their living quarters subject to reasonable and necessary rules established by camp owners. They cited a state attorney general opinion in support of their position. Grantee officials also indicated that some of the 46 farmworkers they represented had telephoned the grantee and complained that they were owed wages. Grantee officials said that farmworkers must sign certain documents, including retainer agreements and affirmations of U.S. citizenship, but denied that the farmworkers were promised "extra money" to sign them.

Grantee officials noted that, in 1983, they initiated an action against grower A on behalf of two migrant farmworkers involving both AWPA and FLSA violations. They stated that, while resolving that dispute, they made it clear to grower A's son that his father and crew leaders were jointly responsible for implementing the farmworker protections provided by AWPA.

Grower A alleged that grantee attorneys engaged in an overall campaign to close migrant labor camps by putting growers out of business. Grantee officials denied this allegation.

Labor Inspections

Labor inspected grower A's two labor camps between June and August 1985 and fined him $700 for violating 13 housing safety and health standards. Labor also charged grower A's three crew leaders with FLSA violations. The crew leaders agreed to full future compliance and paid all back wages of about $327 due nine migrant farmworkers.

Grower A believed a grantee attorney requested the 1985 Labor inspection and that such a request is a form of harassment. Labor's file confirmed that a grantee attorney sent a complaint in July 1985 on behalf of nine migrant farmworkers. However, the file also showed that Labor started its inspection before receiving the complaint. Grower A's $700

fine was later reduced to $350 in an appeal before a Labor administrative law judge.

Grantee officials believed that Labor initiated its inspection due to enforcement reasons and stated they were not aware of Labor's ongoing inspection when they requested the Labor investigation.

GAO Observations

In our opinion, the grantee had a reasonable basis to pursue workers' claims against grower A for violations of AWPA and FLSA that resulted from the actions of crew leaders. Under both AWPA and FLSA, a grower may be legally responsible for violations of law committed by a crew leader. The grower is responsible for the crew leader's acts if the crew leader is determined to be an employee of the grower and may be responsible even if the crew leader is determined to be an independent contractor. If a crew leader is an independent contractor, the grower may be responsible as a "joint employer" of the farm workers.

Apparently, grower A did not understand his potential liability for the crew leader's actions, which may have caused or contributed to his feeling that he was being harassed. In explaining why he felt harassed, grower A said that the grantee attorney entered upon his property without permission, and he speculated that the attorney enticed the workers to pursue claims against him. We do not doubt the sincerity of grower A's feelings. However, we found nothing unreasonable in the grantee attorney's actions. First, various federal and state courts have held that legal services attorneys do not need permission from growers to enter upon the part of the farm where the workers are housed.[1] Second, grower A provided no evidence to support his suspicion that the grantee attorney enticed workers.

Grower A also characterized the grantee attorney's request for a Labor investigation as a form of harassment. Where there is a reasonable basis for an investigation, however, such a request would seem justified. Labor's assessment of a fine would indicate that there was a reasonable basis for an investigation.

[1]See, e.g., Mid-Hudson Legal Services, Inc. v. G & U, Inc., 437 F. Supp. 60 (S.D. N.Y. 1977); State v. Fox, 510 P. 2d 230 (Wash. 1973).

Grower B

Background

Grower B is the sole proprietor of a 550-acre farm. During the period 1985 to 1989, his primary crops were soy beans, wheat, barley, sweet corn, tomatoes, and watermelons. Grower B usually employs migrant and seasonal farmworkers to harvest the tomato and watermelon crops. About seven or eight seasonal farmworkers are usually hired to operate a tomato-picking machine, and about seven or eight migrant farmworkers are usually hired to hand-harvest the watermelons and load them on shipping trucks.

Grower B lost about 75 percent of his 1988 tomato crop as a result of drought. In 1989, floods destroyed his entire watermelon crop and 85 percent of his tomato crop. In 1990, grower B did not plan to grow tomatoes and watermelons or employ any migrant or seasonal farmworkers.

Farmworker Disputes and Grantee Attorney Actions

Grower B's legal dispute involving migrant farmworkers occurred during the 1985 watermelon-harvesting season, when he hired a crew leader and six migrant farmworkers. According to grower B, shortly after starting work, a dispute arose between the workers and the crew leader over whether housing and wages were what the crew leader had promised they would be, and four of the workers walked off the job.

During the summer of 1986, grower B received several letters from a grantee attorney alleging violations of both AWPA and FLSA during the 1985 watermelon-harvesting season and requesting a meeting to reach an out-of-court settlement involving the six migrant farmworkers, including the four that left the job. During an October 1986 telephone call to grower B's attorney, the grantee attorney offered to settle the dispute for $650. Grower B said he refused to settle because he believed he qualified for an exemption under both AWPA and FLSA. The exemption, referred to in AWPA as the small business exemption, relieves agricultural employers of complying with the requirements of AWPA and FLSA if, in any quarter in the preceding calendar year, they did not use more than 500 man-days of agricultural labor.

Grower B believed the grantee attorney used improper tactics in an attempt to reach a settlement by saying, "Pay or we will sue you." Grower B's attorney supplied the grantee attorney with an affidavit signed by grower B in which he estimated that he used only 365 man-

days of labor in 1984 and 379 in 1985. However, he said, the grantee attorney continued the litigation, which lasted about 2 years, resulting in increased legal expenses. Grower B also considered the grantee attorney's cross-examination of his wife as unnecessarily harsh.

According to grantee officials, the use of a "settle or sue" position is not uncommon in the legal profession. They said that their primary basis for bringing the suit was their belief that grower B employed farmworkers for more than 500 man-days during the 1984 harvesting season. Thus, the dispute centered on whether the grantee attorney was willing to take grower B's word regarding the number of man-days of labor he used in 1984, since original employee wage records were not kept.

In February 1988, about 2 years after first contacting grower B about the alleged violations the grantee attorney offered to settle the case for $6,700, representing $1,000 for each of the original six workers and $700 for the grantee's costs. Based on his attorney's advice, grower B again refused to settle. Later that same month, the parties consented to have the dispute decided by a federal magistrate. The grantee attorney claimed that grower B and the crew leader failed to pay minimum wages, keep wage records, provide written disclosures of the job conditions, and provide promised wage rates and housing facilities. On April 5, 1988, the case was heard before a federal magistrate, who found that grower B was not required to meet AWPA or FLSA requirements because he qualified for the exemption under both acts. On April 7, 1989, the magistrate issued a judgment against the liable crew leader in the amount of $1,600 for each of the six farmworkers as statutory damages on the above claims.

Regarding the length of the dispute, grantee officials indicated that grower B's attorney was partially to blame. They stated the attorney raised various defenses not conducive to negotiation, including one that alleged the grantee attorney's clients had not authorized the lawsuit; this increased grower B's costs.

Grantee officials denied their attorney's cross-examination of grower B's wife was harsh and stated it was the only tool available to them as it was she who had reconstructed the 1984 records. Also, they noted that grower B's attorney could have objected, but did not, and that the judge was present to assure that witnesses were treated fairly.

Grower B provided documentation indicating that he incurred legal expenses of about $19,700. Grower B said that under the circumstances

of this case, showing that he was entitled to recover his legal expenses would have been extremely difficult to prove. Grower B said that he also incurred minimal indirect costs for productivity losses and long distance telephone calls to his attorney.

Labor Inspections

Grower B's farm was never inspected or cited for violations by Labor's Wage and Hour Division.

GAO Observations

In our opinion there was a legitimate dispute as to the number of man-days grower B used for purposes of determining whether he was exempt from the law. Grower B prevailed, but only after spending much time and money in defending himself. This case illustrates the amount of legal costs incurred by one grower even when he ultimately prevailed.

We found nothing improper or unreasonable in the attorney's actions about which grower B complained. Concerning the threat of suing unless there was a settlement, it is appropriate for an attorney to inform a party against whom he has a claim that he intends to pursue the claim in the judicial system if he is unable to settle the matter out of court. Regarding grower B's complaint about the cross-examination of his wife, cross-examination is intended to cast doubt on the credibility of the witness. As a result, it may be perceived as harsh and unpleasant. Judges and participating attorneys provide protection for witnesses from being cross-examined in an unreasonable way.

Grower C

Background

Grower C and his brother are partners in a 1,000-acre farm. Over the last 5 years, 1985-89, their primary crops were soy beans, wheat, barley, cucumbers, string beans, cabbage, and strawberries. Only the vegetable crops require the brothers to employ migrant and seasonal farmworkers. About 10 or 12 seasonal farmworkers and about 40 migrant farmworkers who live at an on-site labor camp are usually hired each year.

Grower C's 1989 cucumber, cabbage, and string bean crops were damaged due to drought conditions. Grower C told us that 60 percent of the cucumber, 25 percent of the cabbage, and 50 percent of the string bean

crops were destroyed. In addition, the market for potatoes, a crop they grew until 1985, significantly declined. As a result, they stopped growing potatoes and increased their production of grain crops, which had a higher profit margin.

Farmworker Disputes and Grantee Attorney Actions

Grower C and his brother's legal dispute with migrant farmworkers occurred during the 1985 harvesting season. The brothers told us they hired a crew leader and a migrant farmworker crew to size and bag the potato harvest. They stated that they paid the crew leader a lump sum, which included the salaries due the crew leader and the workers, and that the crew leader kept the records, withheld the taxes, and paid the workers. In November, after the 1985 harvest, the brothers received a letter from a grantee attorney asserting that they had violated provisions of AWPA and FLSA and offering to discuss a settlement. The asserted violations included failure to comply with two housing safety and health standards, failure to disclose working conditions, failure to pay minimum wages, failure to withhold social security taxes, and inadequate record keeping.

The grantee attorney claimed minimum wage violations for 10 farmworkers resulting from workers not receiving credit for all the hours they worked, excessive meal deductions, and unlawful deductions for alcoholic beverages. The grantee attorney also cited record-keeping violations because the brothers and their crew leader failed to record the correct number of hours worked by the farmworkers, record some of the meal deductions on their payroll records, and provide wage statements to their workers. To compensate the workers for all alleged violations, the attorney asked for damages totaling about $3,410. Although the brothers believed the crew leader was responsible, they decided it would cost less to settle than fight in court. After negotiations, the brothers agreed to an out-of-court settlement of $2,500 applicable to six farmworkers. The brothers told us that 4 of the 10 workers had not worked for them and that the grantee attorney had erred in agreeing to represent them.

The grantee attorney accepted an installment payment plan of $250 per month for 10 months, with the grantee responsible for paying each worker the proper share. The brothers also stated that they incurred minimal indirect costs for long distance telephone calls.

The brothers believed the grantee attorney used questionable procedures in this case. They speculated that grantee staff came at night,

after the crew began to drink, and solicited information. Although the brothers acknowledged they had no proof, they believed the grantee staff put words in the workers' mouths.

Grantee officials acknowledged that grower C's camp was visited late at night as part of their annual outreach efforts to migrant farmworkers. They stated the visit had to be made then because the farmworkers graded and bagged the potatoes at a remotely located packing shed until 10:00 or 10:30 p.m. The officials said that it was possible that some of the workers were drinking, but noted that, even if they had been, it would not be a material issue in establishing the violations. Grantee officials denied their staff improperly solicited information from the migrant farmworkers.

The brothers also believed the grantee attorney acted improperly in allowing 5 months—from June to November—to pass before notifying them of the dispute. The brothers contended that the problems could have been easily corrected had they been notified in June 1985. The brothers stated that their records showed they paid the correct amount to the crew leader, who cheated the workers out of the hours they worked. In addition, the brothers believed the grantee attorney's ultimatum of "settle or we will sue" was a form of harassment.

Grantee officials stated that they believed that all 10 workers had worked for grower C. However, since 4 workers could not be located at the time of settlement, in an effort to settle the dispute, grantee officials agreed to a settlement covering 6 of their original 10 clients and involving only FLSA violations. According to grantee officials, the attorney waited until November 1985 to contact the brothers because the farmworkers feared retaliation from the crew leader. Further, they contended that the brothers should have been aware of the violations since Labor conducted an investigation in July 1985 of AWPA and FLSA violations based on a request sent by a grantee attorney.

Grantee officials denied that their attorney harassed the brothers. They pointed to the negotiation that occurred and the agreement to drop four farmworkers and AWPA violations from the settlement agreement. The grantee officials also contended that use of a "settle or sue" position is not uncommon in the legal profession.

Labor Inspections

Labor inspected grower C and his brother's farming operations in 1985 and 1989. The 1985 inspection resulted from a complaint filed by a

grantee attorney on behalf of two migrant farmworkers. During this inspection, Labor found that (1) the brothers violated two housing safety and health standards and (2) the crew leader violated the FLSA minimum wage law as a result of overcharging for meals. The crew leader agreed to pay the back wages in full, and the brothers agreed to correct the housing violations, and no fines were assessed.

In 1989, Labor assessed a $1,700 fine for the following violations: failure to compile and maintain required payroll records, failure to comply with eight housing safety and health standards, and failure to insure compliance with worker transportation protections. In November 1989, when grower C and his brother agreed to comply with the regulations and correct all prior violations, the Labor regional office reduced the fine to $725.

GAO Observations

In our opinion, there was a reasonable basis for a claim against grower C. As discussed earlier, a grower may be responsible for violations of law committed by a crew leader.

Concerning the grantee attorney's actions, we found nothing improper in his tactics. Much of what grower C cited as improper actions by the grantee attorney was unsupported speculation. Further, it is irrelevant that the grantee attorney made a late night visit while some of the farmworkers may have been drinking. It is clear that the farmworkers knowingly consented to be represented and that violations had occurred. Regarding the 5-month delay in taking action, grower C may be correct in asserting that the problems could have been more easily corrected at an earlier time. However, the delay was not improper. Finally, as discussed earlier, the "settle or sue" posture of the grantee attorney is not inappropriate.

Grower D

Background

Grower D was the operator and only stockholder of a 295-acre fruit farm. His primary crops were apples, peaches, pears, cherries, and plums. With the exception of cherries, all the fruit was hand-harvested by migrant farmworkers. Grower D employed between 8 and 20 migrant farmworkers, depending on expected fruit production. In addition, he employed four full-time workers to prune and spray the fruit trees.

Grower D owned one migrant labor camp, which had a licensed capacity for 25 workers. To harvest the crops, grower D directly supervised the migrant farmworkers and did not use a farm labor contractor.

In January 1985, grower D encountered extreme freezing temperatures, which totally eliminated his peach crop and partially reduced his plum and cherry crops. The 1987 summer was very dry, which reduced the fruit size of all his crops. In 1988, grower D encountered sporadic hail storms, which resulted in production losses in all fruits except pears. The 1989 winter/spring brought extreme freezing temperatures, which drastically reduced his overall fruit production—from about 60,000 to about 13,000 bushels.

In early 1990, grower D reached an agreement to sell his fruit farm to a developer. According to grower D, contributing factors to his decision were (1) the grantee attorney's practice of asserting violations of law that the grower believed had not been committed, leaving him little choice but to settle in order to avoid costly litigation, and (2) the lingering possibility of future grantee attorney actions, despite his efforts to comply with farm labor laws. Grantee officials believed that the recent production losses caused by poor weather conditions and the lucrative price a developer may have agreed to pay for the farm may have been the primary factors in grower D's decision to sell.

Farmworker Disputes and Grantee Attorney Actions

Grantee attorneys represented migrant farmworkers in two disputes against grower D. The first dispute occurred in 1984, after a grantee paralegal telephoned him and requested that he pay a migrant farmworker a performance bonus of about $30 for work performed during part of the 1984 pear-harvesting season. According to grower D, the paralegal also requested $500 (the maximum statutory damage award) to settle, because the dispute violated the prompt payment provision of AWPA.

Grower D took the position that he did not owe any performance bonus because the worker did not meet the clear condition in the contract that he complete the harvest season in order to be eligible for the bonus. Since the farmworker worked only 7 to 10 days and then left before the pear-harvesting season was completed, grower D believed the worker was not entitled to a bonus. To settle the matter, grower D offered to pay the $30 bonus during an informal meeting with the grantee paralegal, even though he believed he was not obligated to pay. Initially, the paralegal refused the offer but, after two or three telephone calls,

and, in concurrence with her supervisor, she accepted. Grower D could not locate the following documentation concerning the case: (1) the contract signed by the migrant farmworker; (2) the release form signed by the grower, the paralegal, and the migrant farmworker; and (3) the canceled check. According to grower D, he also incurred minimal expenses for long distance telephone calls to his attorney.

Grantee officials confirmed that a paralegal contacted grower D regarding a migrant farmworker's claim in October 1984. Subsequently, the grantee represented the farmworker concerning this claim. The grantee officials gave us a copy of the letter sent to grower D, which outlined several violations and claims for which the potential liability totaled several thousand dollars. One of the claims was that grower D had failed to provide the farmworker with a written disclosure of the terms of the performance bonus. They believed based on their recollection and then-existing farmers' practices that there was no written contract. They further contended that the paralegal determined that the farmworker was owed a performance bonus of between $80 and $100 and that the dispute was settled for this amount.

Grower D's second dispute involved nine migrant farmworkers and pertained to the 1987 and 1988 harvesting season. The dispute began in November 1988, when grower D received a letter from a grantee paralegal alleging that he had (1) not provided the migrant farmworkers a written disclosure of the working conditions at recruitment, (2) failed to provide the disclosures in Creole to three workers whose native language was Creole, (3) failed to maintain proper records, (4) provided inaccurate and misleading wage receipts, and (5) failed to pay wages when due.

Regarding the first claim, grower D argued that he did not engage in recruitment but, instead, hired the employees on a walk-in basis. Furthermore, grower D said he provided the workers a copy of the "Contract of Employment and Disclosure" they signed when hired. Grantee officials contended that grower D had engaged a farm labor contractor to recruit the migrant farmworkers named in the dispute and that this individual had not provided them with a written disclosure of the working conditions at the time of recruitment. They further contended that the "Contract of Employment and Disclosure" provided to the farmworkers did not include a change that grower D made in his pay rate system.

Regarding the second claim, grower D questioned whether AWPA required him to provide the workers with a copy of the contract in Creole since the three workers in question could speak and understand English. In attempting to correct the asserted violation, grower D said he made extensive, although unsuccessful, efforts to locate someone who could translate the contract into Creole. Although Labor has available a disclosure form in Creole, grower D preferred to use his own form. Grantee officials maintained that the three migrant farmworkers were not sufficiently fluent in English to understand contact terms. They said they required a Creole interpreter during some of their discussions with the workers. To settle this asserted violation, the grantee attorney requested $250 for each affected worker, or $750 in total.

Regarding claims three and four, grower D maintained that his records were accurate, that workers had signed each wage receipt signifying all the information was true and correct, and a Labor Wage and Hour compliance officer had inspected and approved his record-keeping system. According to grower D's attorney, the grantee attorney guessed at and clearly overstated the amount of wages owed for 1987 because he had no wage records to support a claim. However, a grantee attorney argued that the nine migrant workers asserted that they worked more hours than shown on their time and wage receipts and that several of the workers, who had left during the harvesting season, were due partial performance bonuses for the period they worked.

Grantee officials maintained that their attorney had adequate evidence to support the claims in question. That is, based on the 1988 documentary evidence that the farmworkers provided as well as oral evidence provided by workers who worked in both 1987 and 1988, the attorney was convinced that grower D's pay system was inadequate. Grantee officials further contended that the sum of $12,498 represented an amount for which their staff attorney and the clients were willing to settle. They asserted that grower D's potential liability in this dispute was much greater than this amount because AWPA provides statutory damages of up to $500 per violation (per year) for each affected farmworker.

The grantee attorney made a claim against grower D on behalf of nine farmworkers for 1987/1988 back wages and/or unpaid bonuses in the amount of about $5,248, and another $5,500 that represented a compromise of potential statutory damages under AWPA.

Concerning the last claim, the grantee attorney claimed that one of the nine migrants was not paid for work allegedly done in 1987 and 1988 and that grower D had no wage records of the work performed. Grower D argued that the person had not worked and that he had seven witnesses to corroborate his claim. (Grantee officials told us they had a number of witnesses who claimed they had information to the contrary.) To settle this issue, the grantee attorney requested $500 per year or $1,000 in total. Overall, the grantee attorney requested $12,498 from grower D to settle all five issues.

In an attempt to settle the disputes, grower D agreed to the second violation involving the disclosure of working conditions in Creole and offered to pay the amount specified by the grantee attorney ($750) during an informal conference.

After informal meetings, offers of settlement, and several telephone calls, the grantee attorney, in April 1989, agreed to settle the dispute for $4,000. The written settlement agreement did not specify how each individual's award applied to the various alleged violations. In addition to the $4,000 settlement cost, grower D said he incurred $1,000 in legal fees, an unknown amount for long distance telephone calls to the grantee attorney and his own attorney, minimal administrative costs, and an estimated 50 hours of lost supervisory time over his fruit farm operation.

Overall, grower D believed that the grantee attorney asserted violations for which he was not guilty and forced him to settle by threatening to sue if he did not settle. Grower D said that he is opposed to the following grantee attorney practices: (1) not notifying the grower before entering on his property to talk to migrant farmworkers, (2) performing many hours of legal work at no cost to the clients, (3) bringing actions based on uncorroborated oral evidence provided by migrant workers, and (4) notifying the grower of a legal action after the migrant workers have "moved on" to other locations where they and coworkers cannot be questioned by the grower's attorney.

Concerning the above allegations, grantee officials made the following comments. First, their attorneys have no legal requirement to notify a grower before entering his labor camp. They cited the state "Seasonal Farm Labor Act" and several state and federal court decisions in support of their position. Second, limited resources and the small size of their LSC migrant grant prohibits them from bringing legal actions that are not meaningful. Grantee officials pointed out that LSC funding exists

to assure that indigent persons obtain access to the legal system for a redress of their grievances. Third, any lawyer accepts oral evidence, especially if corroborated and supplemented with documentary evidence, in representing a client. Finally, it is the nature of migrant farmworkers to "move on" in correlation with the ending and beginning of harvesting seasons. Grantee officials said that migrant farmworkers sometimes wait until the end of a harvesting season before voicing a complaint due to a fear of retaliation and that once a case reaches litigation, opposing attorneys can take a deposition from plaintiff farmworkers.

Labor Inspections

In September 1986, Labor Wage and Hour Division compliance officers inspected grower D for AWPA and FLSA violations. However, at that time, grower D met the man-day exemption for agricultural labor as provided for under both acts. In September 1987, Labor again inspected grower D's operation for FLSA and AWPA compliance. The officers found that grower D had (1) failed to post an AWPA sign at the work site and (2) violated seven housing safety and health standards at his migrant labor camp. Although the Labor compliance officer considered a $325 penalty, the Labor regional office decided not to assess the penalty because (1) the investigation was the first one grower D had received subject to AWPA and (2) grower D agreed to correct all the violations. Concerning the FLSA inspection, the compliance officers found that grower D kept accurate records of employee work hours. In reaching this conclusion, the compliance officers reviewed grower D's record-keeping system and interviewed three farmworkers.

In September 1988, Labor again inspected grower D for both FLSA and AWPA compliance. The compliance officers found violations of two safety and health standards and proposed a $50 penalty. The assistant area director rescinded the penalty because there was no "direct impact" on the health or welfare of the migrants in the violations found.

GAO Observations

We did not attempt to substantiate the need for or availability of a Creole interpreter. The four grantee attorney practices to which grower D expressed opposition do not appear to be unfair or improper. For example: (1) as discussed earlier, and as provided for by applicable state law, the grantee attorneys have the right to enter the area of the farm where the workers live without first requesting permission from or notifying the farmer and (2) where documentary evidence is unavailable, an

attorney may be fully justified in relying on oral evidence—oral evidence can be the basis for a court decision. However, the grower's perceptions of the propriety and motives of the grantee attorney practices should not be ignored. Those perceptions affect the relationship between the parties and, consequently, the potential for success of a law like AWPA that relies on a private right of action in protecting the rights of farmworkers. In his first encounter with grantee representatives, Grower D believed they were unreasonable. Consequently, later negotiations may have been hindered.

One of grower D's defenses in the second dispute with farmworkers was that he had not engaged in recruitment, and therefore was not obligated to provide written disclosure of the terms of employment. AWPA requires agricultural employers who "recruit" workers to provide the written disclosure;[2] grower D asserted that he hired workers on a "walk-in" basis and did not recruit them. However, the term recruitment has been construed rather broadly to include discussions with workers about the job before securing their services.[3] Thus, almost any contact grower D had with workers before actually hiring them could have constituted recruitment.

Grower E

Background

Grower E operates a 355-acre family-owned fruit farm. The primary crops produced by grower E are apples and grapes. To harvest the 1989 apple crop, he employed about 20 migrant farmworkers, all of whom resided in his migrant labor camp during the harvesting season. To prune the fruit trees in the fall and winter, grower E employed up to 12 seasonal farmworkers. He no longer uses a farm labor contractor to obtain harvest labor.

In early 1985, grower E's farm consisted of 830 acres, on which he grew apples, peaches, cherries, and grapes. During the 1985 fruit-harvesting season, grower E said he employed between 50 and 53 migrant farmworkers and a farm labor contractor.

[2]29 U.S.C. 1821(a) (1988).

[3]See Bueno v. Mattner, 633 F. Supp. 1446, 1464-65 (W.D. Mich. 1986).

Grower E said the 1985 winter brought a severe freeze, which resulted in a 100-percent loss of his peach crop. In 1986, part of his orchard encountered a severe "fire blight" infection, which resulted in a one-third loss of his apple crop. In 1987, he incurred a minor production loss in all fruits due to a severe drought. In 1988, production from the infected trees was down by about 15 percent, and as of early 1990, the trees had still not fully recovered.

Farmworker Disputes and Grantee Attorney Actions

Grantee attorneys represented migrant farmworkers in three legal disputes with grower E. These disputes were initiated in 1984, 1985, and 1988.

First Dispute

In the first dispute, a grantee attorney, in July 1984, claimed that grower E and his crew leader violated two state laws and nine provisions of AWPA, including prompt payment (resulting from failure to pay wages due), record keeping, employment conditions disclosure, and discrimination with respect to one migrant farmworker (a reprisal case, because he previously complained about grower E). The grantee attorney also alleged that the crew leader illegally deducted money from the migrant's pay, resulting in minimum wage violations under FLSA. To settle the claims, the grantee attorney requested back pay and liquidated damages totaling $4,143, plus a court order approving the settlement and detailing injunctive relief. In a July 1984 letter to the grantee attorney, grower E denied all alleged violations.

The grantee attorney believed the allegations were serious and widespread and filed a class action suit in federal court in November 1984. Two class representatives were named in the suit. In March 1985, the parties reached a settlement that, among other reliefs, required grower E to pay back wages and damages to the two class representatives totaling about $3,550; pay $3,500 to the grantee for its legal fees in the case; pay up to $750 to notify class members of the settlement terms; use a specific form of wage statement that showed starting and stopping times and total hours worked each day; discontinue employing the crew leader named in the agreement; prohibit the sale of alcoholic beverages and cigarettes by future farm labor contractors; undertake a good faith attempt to resolve any claims raised by any migrant farmworker employed in 1982, 1983, or 1984 by grower E; and accept a federal court order mandating compliance with certain provisions of the settlement agreement for a period of about 4 years. The settlement agreement

noted that grower E's agreement was not to be construed as an admission of liability or of wrongdoing. The grantee told us that, in recognition of grower E's financial condition, the grantee attorney withdrew his request for certification of a plaintiff class for damages. In a separate settlement, the crew leader agreed to pay the two farmworkers an additional $3,000 in damages. In October 1985, the court approved both settlements.

Grower E stated that in addition to the settlement payment to the workers, he paid some portion of the $750 amount designated for class action advertising, paid legal fees of $4,600 for his own legal representation, and incurred an estimated $4,400 in accounting fees for preparation of financial statements and schedules required by the grantee attorney in connection with settlement discussions. Grower E provided us copies of accountants' invoices totaling $8,033, of which he estimated $4,400 applied to this dispute. In addition, grower E claimed he spent numerous hours in legal consultations with his attorney and, in doing so, could not always supervise farm operations, which affected fruit quality. Grantee officials questioned the $4,400 estimate that grower E attributed to the cost of financial statement preparation.

Grower E told us that because (1) this dispute principally concerned the crew leader's acts and omissions and (2) he wished to avoid future problems that could arise from a crew leader's conduct, he decided to no longer use crew leaders. Grower E told us this decision left him in a position where he was the only farm manager. To manage effectively, grower E alleges that he had to sell off three parcels of productive land totaling about 480 acres, which were remotely located from his residence. Grower E said that he also used part of the proceeds from an auction of much of his farm machinery and equipment to pay for the settlement and his legal fees and that the expense of this dispute nearly put him out of business. Grantee officials, however, questioned the validity of grower E's conclusion about the effect of their attorney's actions. The officials cited grower E's financial difficulty before the subject dispute as a basis for their opinion.

In March 1985, on behalf of one additional class member included in the class action dispute, a grantee attorney sent a letter to grower E's attorney requesting payment of $2,221 in back wages and damages. In July 1985, the grantee attorney offered to settle the class member's disputes for $1,500. In making this settlement offer, the attorney used the minimum wage rate of $3.35 per hour, the number of hours worked as asserted by the farmworker, the wages actually received by the worker

from the crew leader, and an amount for statutory damages under state law. The grantee attorney did not consider an amount for statutory damages under AWPA. Grower E agreed to a lump sum payment of $1,500 to settle all the worker's claims. Grower E said he paid $500 in fees to his own attorney.

Grower E stated that he was surprised to find himself threatened with a new action on behalf of a person whom the grantee attorney had indicated earlier he could not locate. Grantee officials, however, stated that their attorney had previously advised grower E that they represented a third farmworker who had a claim against grower E, and that since he could not be located at that time, his case would be handled separately. The officials asserted that both parties agreed not to negotiate a settlement until the farmworker became available. Grantee officials provided a copy of a letter dated March 15, 1985, that supported their position.

Second Dispute

In the second dispute, the grantee attorney sent a letter to the grower in June 1985 claiming that a farmworker had pruned certain fruit trees, work for which he was not paid. The grantee attorney also claimed that grower E had violated six provisions of AWPA and two state laws, and offered to settle for $564. (This amount represented $64 in back wages and $500 in statutory damages.) In a July 1985 letter, the attorney advised grower E that he represented three additional farmworkers and now requested $1,000 ($250 for each farmworker) to settle all issues. In the July 1985 letter, the attorney also alleged that grower E failed to use the specific wage receipts and disclosure forms required by the class action settlement agreement.

Grower E did not believe he was liable for payment because he claimed to have (1) specifically instructed the workers not to prune the trees in question and (2) clearly identified the trees with fluorescent markers. In an attempt to settle the dispute, grower E's attorney, in July 1985, offered a total of $100, conditional upon obtaining what he referred to as "general releases" from the farmworkers. In September 1985, grower E's attorney increased the offer to $200, retaining the condition of obtaining general releases. The grantee attorney, however, did not respond to grower E's offer for over 2 years.

In October 1987, the grantee attorney renewed his $1,000 settlement offer. This was shortly after grower E testified before a congressional subcommittee about his experiences with the grantee. Considering the timing of the grantee attorney's renewed action and the 1988 action brought against him, grower E contended that the grantee was engaged

in a campaign to retaliate against him for his July 1987 congressional testimony. He further believed that the grantee wanted to silence him and to make him an example for any other growers who might consider speaking out against the grantee. Grantee officials said their action resulted solely from what they asserted were violations of law by grower E.

Grantee officials said their attorney waited 2 years to respond for several reasons, including (1) the need to devote much of his time to labor camp outreach activities and (2) a hope that the passage of time might allow grower E's farm operation an opportunity to restore financial stability sufficient to allow for a more productive resolution of the claims. Grantee officials said they resumed negotiations in October 1987 because the statute of limitations deadline was imminent.

On November 4, 1987, grower E's attorney orally offered to pay the requested $1,000 to settle the claim. By letter dated November 6, 1987, grower E's attorney advised the grantee attorney that grower E would need a "complete release" from any further claims by the four farmworkers. On November 19, 1987, the grantee attorney forwarded what grower E and his attorney considered to be "limited-scope" releases signed by three of the four farmworkers. The fourth signed release was mailed the following day. (Grantee officials said the release form was based upon releases agreed to with the same law firm representing grower E in resolving other matters.) Grower E's attorney, by letter dated December 1, 1987, raised a concern about the release form and indicated he had drafted a revised release. By letter dated December 15, 1987, grower E's attorney sent the new release form to the grantee attorney. By letter dated December 24, 1987, grower E's attorney sent four $250 checks (for a total of $1,000) made payable to each of the four farmworkers and stipulated that the checks could be cashed on the condition that the workers would execute the release form he drafted. The grantee received the letter and checks several days after Christmas. However, the new release form was unacceptable to the grantee attorney, and he returned the four checks on January 11, 1988.

In his January 11, 1988, letter, the grantee attorney advised grower E's attorney that the grower had failed to comply with the agreed terms of settlement providing that the payments would be received before Christmas, and asked for an additional $100 for each worker to settle the dispute. The attorney indicated the additional sum was required due to grower E's failure to settle the matter in a timely fashion—before

Christmas, so that the workers would have the money before the holiday. The dispute was subsequently settled in the amount of $1,400, with the grantee attorney agreeing to use the release form prepared by grower E's attorney after incorporating modifications requested by the grantee attorney.

Grower E said his attorney believed the workers' claims to be frivolous, but advised him to settle out of court to avoid the cost of legal defense. Grower E advised us that he spent $1,000 for his own attorney fees and incurred a loss in productivity due to time spent away from his farm in legal consultations.

Grantee officials maintained that their clients' claims represented serious violations of two state laws and several provisions of AWPA, and were far from frivolous.

Third Dispute

In grower E's third dispute, a grantee attorney made his initial contact with grower E by telephone on January 28, 1988. In follow-up letters, the grantee attorney claimed that grower E failed to pay four migrant farmworkers wages for hours worked (two women who claimed to have periodically helped two men to prune trees, and a man and woman who allegedly pruned 15 trees). Concerning these four and as many as four other migrant farmworkers, the grantee attorney claimed that grower E failed to maintain proper payroll records, failed to disclose the terms and conditions of employment, provided false and misleading wage records, failed to pay on time, failed to pay minimum wages, failed to comply with working arrangements, retaliated against the farmworkers, and violated the terms of the prior court-approved settlement. Grower E maintained he did not hire the two women workers and that the man and woman pruned trees without his consent or knowledge. Grower E further said his timekeeping practices were to ask the workers what time they started work and to provide an unpaid half-hour period for rest and meals. The workers asserted, however, that they worked longer hours than what grower E's records showed and often worked through their rest and meal period.

By letter dated February 16, 1988, the grantee attorney provided grower E's attorney with a draft complaint and requested a settlement offer for each alleged violation. The grantee attorney indicated he would delay filing the complaint until February 26, 1988, in order to facilitate settlement and invited grower E's attorney to a meeting to review the

allegations. Grower E's attorney responded on February 22, but disagreed with the facts alleged in the draft complaint. Subsequent negotiations failed to reach a settlement, and on May 27, 1988, the grantee attorney filed a complaint in federal court. In addition to seeking monetary damages and attorney's fees, the complaint sought injunctive relief to prohibit grower E from continuing certain practices.

The case went to trial in October 1989. In November 1989, the court decided that the two women who claimed to have periodically helped rake prunings should be treated as employees for purposes of FLSA. Concerning the man and woman who entered grower E's property and pruned 15 fruit trees, the court found that they were not employees of grower E. Concerning the remaining four farmworkers who were employees, the court found that two had been underpaid by $3.45 and $6.05, respectively, and two had not been paid for work performed in the proper workweek. The court also found that grower E's time records contained inaccuracies, grower E did not adequately disclose the piece rate for certain areas of work, and wage receipts distributed by grower E reflected the inaccuracies of the time records. Also, the court concluded that none of grower E's actions were retaliatory.

For the violations it found, the court, in November 1989, awarded the farmworkers a total of $515 in back wages and $1,559 in statutory damages. The court's ruling noted, however, that the grantee attorney's tactics of preparing a complaint and forwarding a copy to grower E's attorney just 19 days after initial contact was not conducive to negotiations. Grantee officials defended their prompt forwarding of the draft complaint based on the context in which the violations of law occurred—when grower E was operating under an injunction that specifically prohibited the conduct at issue. Also, in the reconsideration discussed below, the court acknowledged that it did not fully consider the directives of the 1985 settlement agreement and order.

Following entry of the court's decision, a grantee attorney, in December 1989, filed for (1) a reconsideration of the amounts awarded to the farmworkers, (2) a 3-year extension of the court injunction imposed from the 1984 dispute, and (3) attorney's fees and costs totaling about $66,000. On March 21, 1990, the court partially accepted the attorney's arguments for reconsideration and awarded $1,000 in additional AWPA damages. The court limited its award to this amount because it found (1) the farmworkers caused many of the inaccuracies in the records and (2) the two women who worked without permission did not expect to be paid in the first place.

On April 26, 1990, the court ruled that the injunction ordered in the 1984 dispute should not be extended as a result of the 1989 judgment. The court concluded that the time had come to put these cases to rest and that to extend an injunction for 3 more years for what it deemed to be "de minimis" (insignificant) violations, would be "extraordinary, harsh, and inequitable." The court said future violations by grower E could be addressed through appropriate actions under applicable state and federal statutes.

On May 17, 1990, the court awarded $9,154 to the grantee for attorney's fees and costs. The court's decision commented on the grantee's handling of the case. For example, the court agreed with the defendant, finding that the case was not handled efficiently and was "prepared and prosecuted unreasonably." In commenting on the hours the grantee attributed to settlement, the court opined that settlement was "effectively scuttled" by the grantee attorneys' insistence that the settlement be tied into the 1984 dispute. Grantee officials told us they disagreed with some of the judge's analysis, and they filed a motion for reconsideration.

Grower E told us that, as a result of this dispute, he spent hundreds of hours in either legal consultation or court appearances and was unable to fully supervise his fruit farm operations, causing decreased efficiency and fruit quality. The trial was held during the harvest season. Grower E also said he incurred a substantial expense for his own attorney's fees—an amount he did not wish to disclose at the time of our review—and the expense of long distance telephone calls to speak with his attorney. Grower E contrasted his situation to that of the migrants, who received legal representation at no cost. According to his attorney, grower E's overall costs to date, in all of the described disputes, have exceeded $100,000.

Grantee officials said that throughout the pretrial phase of this dispute, they made every effort to settle the claim without resorting to litigation. In particular, they cited a November 1988 settlement offer in which their attorney offered to waive all attorney's fees in an attempt to break the apparent impasse in settlement negotiations, making it clear that such an offer had never been made before in any other case and that it was made as an extraordinary good faith gesture to resolve the dispute. The offer requested grower E to (1) pay damage claims to the farmworkers totaling $5,703 and (2) pay an unstated amount as reimbursement of out-of-pocket expenses incurred in the dispute. The offer

also established January 20, 1989, as the deadline to receive a proposal for payment of damages and grantee out-of-pocket expenses.

Grantee officials said further that the unwillingness of grower E to consider any reasonable settlement of the claims is what led to the high costs in this dispute. The officials argued that facts admitted to by grower E as early as February 1988 and in September and October 1988 concerning his knowledge of the presence of women in the orchard should have established as a matter of law a significant probability that such women would be determined to be his employees. However, they said that grower E refused to offer any compensation in settlement of claims by these two women.

Grantee officials believed that grower E had obtained at least partial economic support from a farmer association's collective litigation fund in connection with this dispute. Upon our inquiry, grower E acknowledged receiving such financial assistance in the amount of $4,000—an amount his attorney characterized as insignificant in relation to his total cost of defending this dispute.

Overall, grower E believed that the grantee wanted to put him out of business. He bases his belief on the number of legal actions initiated against him since 1984; the tactics used by the grantee; the fact that the grantee, having been denied injunctive relief in the court's November 1989 decision, sought to reopen the 1984 dispute in a second effort to obtain an injunction based on the same facts and transactions litigated in the latest dispute; and the fact that each settlement was immediately followed by the grantee attorney's initiation of a new action.

Grantee officials denied that their legal actions were intended to put grower E out of business, pointing to their withdrawal of class action certification in the first dispute. They said their only motive was to require him to correct violations of the law.

Labor Inspections

Labor's Wage and Hour Division last inspected grower E in October 1984. This investigation resulted from a complaint sent by a grantee attorney on behalf of two migrant farmworkers who alleged numerous violations of AWPA and FLSA by grower E and his crew leader. Although Labor could not substantiate all the violations alleged in the complaint, the two inspecting compliance officers found the following violations: failure to compile and maintain required payroll records, failure to provide a wage statement to the workers, and failure to pay minimum wage

rates. Concerning the AWPA violations, the inspectors proposed a $450 AWPA penalty. With respect to the FLSA violation, the inspectors initially found that 24 migrant farmworkers were due back wages totaling $1,927. After allowing grower E credit for claimed wages paid to two labor camp cooks, the Labor area director revised the back wage claim to $1,462 applicable to 18 migrant farmworkers. Because grower E agreed to pay $1,462 in back wages for minimum wage violations and agreed to future AWPA compliance, the Labor area director rescinded the proposed $450 penalty.

According to a Labor Regional Wage and Hour Division official, grower E has not been inspected since 1984 because of (1) the lack of a received complaint against him and (2) their policy of giving priority to "worst offenders." Grower E acknowledged that he received one other Labor citation in 1975 for failure to assure that his crew leader had a current registration card.

GAO Observations

We offer no observations regarding these disputes because grower E recently sued the grantee for abuse of process, raising questions about these disputes for a court to address.

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